

WHAT IS A 'PERSON AND WHY DOES IT MATTER'?

Person A person may be defined as being, entity or association which is capable of having legal rights and duties. This includes natural persons and juristic persons. Also known as a legal subject.

Legal Person All persons have legal personality. This phrase describes the quality of being a person. Also known as legal subjectivity.

The importance of being a 'person' is that in the eyes of the law. Only persons can have legal rights and duties.

WHAT ARE RIGHTS, DUTIES AND LEGAL OBJECTS?

Physical things Where the object of the right is a physical thing, the right is a 'real right'. *For example houses and cars.*

Performances Where the object of the right is a performance, the right is a 'personal right'. *For example babysitting or taxi ride.*

Aspects of your personality Where the object of the right is an aspect of your personality, the right is a 'personality right'. *For example your reputation or your privacy.*

All legal rights give rise to corresponding legal duties.

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. Real rights operate against the whole world

PERSONAL RIGHTS

Where the object of the right is a performance, the right is a personal right. Personal rights operate primarily against a *particular person* the person who owes the performance. Good examples are the performances owing in terms of a contract.

PERSONALITY RIGHTS

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. The law protects various aspects of a persons 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, bodily freedom, reputation, dignity and privacy.

CONSTITUTIONAL RIGHTS

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.

WHAT IS CAPACITY?

Capacity refers to what a person is capable of doing in terms of the law. In other words what are the persons legal abilities and competencies. Including the following passive legal capacity, capacity to perform juristic acts, capacity to be held accountable for wrongdoing and capacity to litigate.

PASSIVE LEGAL CAPACITY

Passive legal capacity means the capacity merely to have legal rights and duties. All persons have passive legal capacity.

CAPACITY TO PERFORM JURISTIC ACTS

Juristic acts are voluntary human acts which have intended legal consequences. The capacity to perform juristic acts refers to a persons capacity to actively change his or her legal position. The law only recognizes capacity to perform juristic acts if the person is capable of understanding the legal nature and legal consequences of his or her acts. Examples of the kinds of juristic acts include: entering into contracts, getting married, acquiring and alienating property, making a will, consenting to medical treatment and holding office.

CAPACITY TO BE HELD ACCOUNTABLE FOR WRONGDOING

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

CAPACITY TO LITIGATE

The capacity to litigate means the capacity to be party to a lawsuit, either as a plaintiff or a defendant. In Latin peoples capacity to litigate is referred to as their *locus standi in judicio*.

WHAT IS 'STATUS'

In the legal context, the word status means your standing in the eyes of the law. Peoples legal status determines their ability or capacity to relate to the legal system. Specifically a person status determines which legal capacities a person has in the eyes of the law. A persons legal status is based on membership of a particular class or group. The law is primarily concerned with groups defined in terms of age and mental disability.

FORMS OF LIABILITY

Three Forms of Liability?

Contractual Liability+Delictual Liability-
+Liability for unjustified enrichment

CONTRACTUAL LIABILITY

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. Most contracts are reciprocal. Suing someone 'ex contractu' is a very powerful claim. The court can order specific performance from the other contracting party. Where there has been breach of contract, the court can order the breaching party to pay damages

DELICTUAL LIABILITY

Delicts are civil wrongs. A good example of a delict is a car accident. 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); and 4. her or his action caused... 5. some form of damage to you. You sue for patrimonial damages when the defendant's act caused you financial or monetary loss. Or non-patrimonial damages (for non-monetary harm).

UNJUSTIFIED ENRICHMENT

An action on the grounds of unjustified enrichment arises where 'one person's estate is increased at the expense of another without legal cause'. 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. 3. There is no valid legal reason that justifies the enrichment of the defendant at the plaintiff's expense or that justifies the retention of the enrichment by the defendant.

USEFUL REMEDIES, DEFENCES AND DOCTRINES

rei vindicatio The owner of a physical thing can use this remedy to recover his or her thing from anyone who is in possession of it without cause. The *rei vindicatio* is an action 'in rem' (a property based remedy).

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.

exceptio non adimpleti contractus Is a defence that can be used when parties owe reciprocal obligations in terms of a contract.

USEFUL REMEDIES, DEFENCES AND DOCTRINES (cont)

Aquilian action (called *actio legis Aquiliae*) is a delictual remedy. A plaintiff can use this remedy to claim damages for patrimonial damages when her or his personality rights have been infringed. The *actio iniuriarum** requires fault in the form of intention; the plaintiff cannot use this remedy if the defendant has been merely negligent.

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. The defendant must have acted with either intention or negligence.

doctrine of estoppel 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.

The contracts, delictual and enrichment remedies cannot be brought against just anyone- they can be brought only against a particular person. These are claims in *personam*.

SUCCESSION

Estate The property of the person who dies is referred to as 'the estate'. Your estate means everything you own.

Intestate Succession If you die without a valid will, you die 'intestate' and your estate will be divided up according to the rules of 'intestate succession'. The basic rule of intestate succession is that the estate must be divided among the deceased's next of kin.

Testate Succession Means succession in terms of a will. The basic rule is that the wishes expressed in the will must be carried out. If the will fails for some reason then the rules of intestate succession will apply.

Testator The person who writes the will.

For all forms of succession, the estate 'vests' on the day of the deceased's death.



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