UNIT 2:
BASIS OF CLAIMS, LIABILITY, AND REQUIREMENTS FOR LIABILITY: IDENTIFIED CLAIMS
Learning outcomes

After completing Unit 2, you should be able to do the following:

- Understand what the legal basis of third-party claims is.
- Realise that in certain circumstances the liability of the RAF is excluded or restricted.
- Understand why the RAF is held liable for third-party claims.
- Know the requirements for liability of the RAF in the case of so-called “identified claims”.
- Identify the individual requirements for liability in respect of third-party claims.

Readings

Klopp.e (2008) Chapter 2
UNIT 2.1: BASIS OF CLAIMS AND REQUIREMENT FOR LIABILITY: IDENTIFIED CLAIMS

1. Legal basis of third-party claims

Study p. 19.

In terms of the RAF Act, liability of the wrongdoer is statutorily displaced away from said wrongdoer to a statutorily-created fund, the Road Accident Fund (RAF). Apart from this displacement, actual liability remains largely based on common law principles.

2. Exclusion, restriction of liability, and prescription

Study p. 19.

3. Road Accident Fund liability

3.1 General principle

Study pp. 20-21 and section 21 of the RAF Act 56 of 1996.

Section 21 of the RAF Act compels a third party to institute his/her claim against the RAF and not the wrongdoer. The effect of this section is to replace the third-party claimant’s common law rights to a delictual claim against the wrongdoer with a claim against the RAF. It is, however, important to remember that the wrongdoer’s common law delictual liability revives in cases where the RAF Act excludes or restricts the liability of the RAF.

3.2 Exceptions: wrongdoer or employer personally liable

Study pp. 21-25.

The wrongdoer can be held personally liable in the following circumstances:

- Where the RAF is unable to pay compensation:
  - The onus of proving inability rests with the third-party claimant.
  - Under these circumstances, the wrongdoer becomes liable for as much of the claim as the RAF is unable to pay.

- Where the relevant motor vehicle is driven without the owner’s permission:
  - Here the third party has the option of either claiming against the wrongdoer (for example, a thief or unauthorised user) or the RAF.

- Where the third party’s claim is excluded by provisions of the RAF Act:
It is important to remember that the exclusions only take effect in circumstances where a third party or his/her breadwinner is conveyed and injured or killed by the sole negligence of the driver of the vehicle in which he/she is being conveyed. These exclusions will be discussed in more detail in Unit 4.

Where the third party’s claim is restricted by provisions of the RAF Act:

- The RAF Act provides for the restriction of certain third-party claims against the RAF to a maximum amount.
- If such a claim exceeds the prescribed maximum, the balance may be recovered from the wrongdoer. These restrictions will be discussed in more detail in Unit 6.

Where personal liability is based on a right of recourse and joint and several liability:

- The RAF Act creates the possibility that the RAF can, under certain circumstances, recover the compensation paid by it from the owner and both the authorised and unauthorised driver of a motor vehicle. These circumstances will be discussed in more detail in Unit 9.

4. Requirements for liability of RAF where owner or driver of motor vehicle is identified and jurisprudential nature of a third party claim

4.1 Requirements

Study pp. 25-26 and section 17(1) of the RAF Act.

According to Klopp.er, section 17(1) discloses six requirements for liability which must be proven by a third party in order to succeed with his/her third-party claim.

4.2 Jurisprudential nature of a third party claim


Klopp.er indicates that a third party’s claim against the RAF is a unitary common law claim for compensation of damages arising out of the unlawful and negligent driving of a motor vehicle resulting in injury or death of a person. A third party claim cannot be ceded or inherited before *litis contestation*.

5. Individual requirements for liability

5.1 Road accident victim or claimant as third party

Study pp. 27-40, *Mtati v Road Accident Fund* 2005(6) SA 215 (SCA) and *Van der Merwe v Road Accident Fund* 2006 (4) SA 230 (CC). Read pp. 41-46 (up to par. 5.2).

In terms of section 17(1) of the Act, the following classes of third parties are entitled to claim against the RAF:

- The third party who sustained bodily injuries;
5.2 Conduct: driving of a motor vehicle or other unlawful act committed by certain persons

Study pp. 46-68, sections 20(1), 20(2), and 20(3) of the RAF Act as well as Chauke v Santam 1997 (1) SA 178 (A) and Bell v RAF [2007] SCA 83 (RSA). [Leave out: pp. 57-58 (up to par. 5.2.4); pp. 59 (from par. 5.2.4.2.) – 63 (up to par 5.2.4.3.).]

This requirement can be subdivided into the following:

➢ Driving

• Take note of the two meanings of the concept “driving”: firstly, driving in its ordinary sense and, secondly, in an extended sense.
• The Act creates certain presumptions that extend the meaning of driving:
  − Section 20(1): where a motor vehicle is brought into motion by other means than its own mechanical power.
  − Section 20(2): where a motor vehicle is set into motion as a result of the force of gravity.
  − Section 20(3): where a motor vehicle was left at a specific place.
• As explained by Klopp.er (pp. 49-50), the above-mentioned presumptions make it possible to identify the driver of the vehicle concerned in cases where it is not clear whether a particular person is or was driving that motor vehicle.
• Make sure that you are able to identify the person who is considered to be the driver of a towed vehicle.

➢ Motor vehicle

• For purposes of the Act, a motor vehicle propelled or towed on a road by means of fuel, electricity, or gas and designed or adapted for use on a road.
• To qualify as a motor vehicle in terms of section 1 of the Act, the following essentials elements have to be taken into consideration:
  − The method of propulsion or “propulsion test”
  − The purpose for which the vehicle was designed or “design test”
  − The concept: “road” as a determinant factor in relation to the design test.

➢ Conduct: other unlawful act

• It is not only “the driving of a motor vehicle” that can give rise to a third-party claim. Section 17(1) of the Act also refers to “other unlawful acts” committed by the driver or other persons.
• As pointed out by Klopp.er (p. 58), this other unlawful act must, however, be directly connected or linked to a motor vehicle and the driving thereof, while not being negligent driving. (See pp. 63-64 for examples of these kind of acts).
Particular acts

- These other unlawful acts can be committed by the driver, owner, an employee of the owner of the motor vehicle, or any other person. Make sure that you are able to determine whether a master and servant relationship exists by applying the principles as set out on pp. 64-66.
- Besides the ordinary common law meaning of the concept of “owner”, it also has an extended meaning in terms of section 1 of the Act, which includes the following persons:
  - A motor dealer in relation to unsold motor vehicles
  - A transporter of new vehicles from one place to another
  - An instalment sale purchaser
  - A lessee where the period of lease is at least 12 months.

5.3 Fault: negligence

Study p 69 (paragraphs 5.3.1-5.3.3), and carefully read pp. 70-89.

- Because of the fact that negligence is a sufficient form of fault to establish liability of the RAF, an intentional act will also give rise to liability.
- The standard used to judge the conduct of a person is that of the reasonable person or bonus paterfamilias. In accordance with this, a driver will be considered negligent if a reasonable person/driver would have acted differently if the damage caused were reasonably foreseeable and preventable.
- The slightest degree of negligence is sufficient to render the RAF liable.
- Not only is the degree of negligence important with regard to liability of the RAF, but it also has a bearing on the amount of damage recoverable by a plaintiff.

5.4 Damage: Bodily injury or loss of maintenance

Read pp. 89-98. Study p. 99 and section 18(4) of the RAF Act.

- Only the following damage, specifically referred to in section 17(1) of the Act, can be claimed:
  - Damage or loss occasioned by the bodily injury of a third party
  - Damage and loss caused by the bodily injury or death of any other person
- The above-mentioned damage includes past and future loss.
- Before 1 November 1991, a third party was entitled to claim reasonable funeral and cremation expenses in respect of a deceased killed by the unlawful and negligent driving of a motor vehicle. After 1 November 1991, only necessary funeral and cremation expenses were recoverable.
- When the RAF Act came into operation on 1 May 1997, only the necessary actual costs of the funeral and cremation were made recoverable from the RAF.

5.5 Causality

There must be a causal link between the driving of a motor vehicle or other unlawful act and the resulting injury, death, and consequent damage.

The following two phrases that are contained in section 17(1) of the Act have a bearing on causality:

- “caused by”: these words indicate direct causality in the sense that the death or injury of a person was the immediate and direct consequence of the driving of a motor vehicle.
- “arising from”: according to Klopp.er (p. 101-102), these words indicate those circumstances under which the driving of a motor vehicle did not directly cause the death or injury of a person, but under which a causal connection between such conduct and the death or injury of a person can, nonetheless, still be construed. (See pp. 105-106 for examples of these driving-related activities which caused injuries).

5.6 Locality

Study p. 108.

- The RAF Act only applies in the Republic of South Africa.
- Driving is not confined to driving on a public road. Confirmed in Bell v RAF [2007] SCA 83 (RSA).

Activity 1

1. When will a third party be entitled to claim compensation from the wrongdoer for injuries sustained during a motor vehicle accident?
2. Discuss section 17(1) of the RAF Act as the basis for the liability of the RAF on account of a motor vehicle accident.