UNIT 3:
REQUIREMENTS FOR LIABILITY:
HIT-AND-RUN (UNIDENTIFIED MOTOR VEHICLES)
Learning outcomes

After completing Unit 3, you should be able to do the following:

- Know what is meant by an “unidentified vehicle”.
- Understand what the basis of liability of the RAF for hit-and-run claims is.
- Realise that the RAF’s liability for hit-and-run claims may be excluded or restricted.
- Explain what the requirements for liability of the RAF are for bodily injury or death of a person by the unlawful and negligent driving of an unidentified motor vehicle.
- Know what a certificate *probabilis causa litigandi* is.
- Know that the RAF is entitled to require the third party to cede his/her claim against the wrongdoer to the RAF.

Readings

Klopper (2008) Chapter 3
Introduction

Study p. 109.

The RAF is not only liable for so-called “identified claims”; it is also responsible for claims where neither the identity of the driver nor that of the owner is known or can be established. These claims are also referred to as “hit-and-run” claims.

1. Meaning of “unidentified vehicle”

Study p. 110 and section 17(1)(b) of the RAF Act.

Take note of the fact that it is not the vehicle that is unidentified, but the driver and owner thereof.

2. Basis of liability

Study p. 110.

The legal basis of the RAF’s liability remains the unlawful and negligent injury or killing of a person by the unlawful and negligent driving of a motor vehicle. Here the third party is, however, afforded an action despite the fact that the identity of the wrongdoer is unknown.

3. Prescription, exclusion, and restriction of liability

3.1 Introduction

Study pp. 110-111.

The liability of the RAF may be excluded or restricted by prescription, the provisions of the RAF Act, the provisions of the RAF regulations, and the provisions of the Apportionment of Damages Act 34 of 1956. Take note that a hit-and-run claim against the RAF prescribes two years from the date on which the cause of action arose. This principle was confirmed in Geldenhuys and Joubert v Van Wyk and Another 2005 (2) SA 512 (SCA).

3.2 Exclusion of liability

Study pp. 111.

Take note that the last two exclusionary circumstances mentioned in your prescribed textbook have been scrapped.
• Reg 2(1)(c): requiring of the claimant to submit an affidavit to the police setting out the circumstances of the accident within fourteen days (or fourteen days from the date he was reasonable able to do so); and

• Reg 2(1)(d): requiring physical contact between the unidentified vehicle and the claimant or deceased or the vehicle in which the claimant was a passenger.

3.3 Restriction of liability

Study p. 111.

Some of the restrictions referred to might be somewhat confusing to you at this stage, but you need not worry as they will be dealt with in detail in Unit 6. As you will see in said Unit, many of these restrictions have been done away with in terms of the RAF Amendment Act 19 of 2005 with regard to collisions that took place from 1 August 2008 onwards.

4. Requirements for liability

Study p. 112 and pp. 349-350.

Regulation 2 (1) of the RAF regulations (see pp. 349-350 of your textbook) contains the requirements for liability of the RAF for bodily injury or death of a person by the unlawful and negligent driving of an unidentified motor vehicle. Take note of the fact that regulations 2(1)(c) and 2(1)(d) are no longer requirements (see paragraph 3.2 above) for a third-party claim to come into existence.

5. Individual requirements for liability

5.1 Introduction

Read the short introduction on p. 113.

5.2 Compliance with the requirements of the RAF Act of 1996

Study p. 113.

Not only must a claimant comply with the requirements peculiar to hit-and-run claims, but he/she must also comply with the requirements of the RAF Act that are applicable to both identified and unidentified claims.
5.3 Unlawful and negligent driving of unidentified motor vehicle

Carefully read pp. 113-114.

Take note of the possibility that in certain circumstances two persons can drive the same vehicle.

To determine who the owner of a particular vehicle is, common law principles as well as the provisions of section 1 of the RAF Act should be taken into account.

Make sure that you understand what the safest course of action on behalf of a third party claimant would be where a multiple motor vehicle collision took place and uncertainty exists whether the unidentified vehicle was the cause of the collision.

5.4 Third party must take reasonable steps to establish identity of driver or owner


Take note of the examples of steps that can be taken by the claimant which will be deemed to have been reasonable.

The burden to prove that reasonable steps have been taken to establish the identity of the owner or driver rests with the claimant.

5.5 Reporting of accident within fourteen days

Read pp. 115-116.

During 2007 the Constitutional Court decided that this requirement was unconstitutional. A claimant therefore no longer needs to comply with the duty as set out in Regulation 2(1)(c) of the RAF regulations. See Engelbrecht v RAF 2007 (6) SA 96 (CC). The order made by the court however only applies to cases which have not been finalised prior to the date of judgement being 6 March 2007.
5.6 Claim in terms of MMF regulations: inability to obtain judgment against appointed agent

Study p. 116.

Even though this requirement no longer appears in the RAF regulations, it may still remain important with regard to claims that arose before 1 May 1997 and that have to be dealt with in accordance with the provisions of the MMF Act 93 of 1989.

5.7 Physical contact

Read pp. 117-119.

In Bezuidenhout v RAF 2003 (6) SA 61 (SCA) it was decided that this requirement need no longer be proven by a third-party claimant.

6. Non-compliance and section 24(5)

Study p. 120.

Section 24(5) of the Act has only procedural application and does not have the effect of legally validating non-compliance with the regulations should the RAF not object to the validity of a claim submitted with it. See Krischke v Road Accident Fund 2004 (4) SA 358 (W).

7. Certificate *probabilis causa litigandi*

Study p. 120.

A hit-and-run claim against the RAF will only be heard by court if a so-called certificate *probabilis causa litigandi* has been lodged and consequently forms part of the court’s file on the matter. This certificate must be issued by an independent advocate or attorney with at least ten years’ experience after considering all evidence available to both parties regarding the cause of the accident and the liability of the RAF. The advocate or attorney must obtain as much information as possible with regard to the merits of the case from both the claimant and the defendant.

8. Compulsory cession of claim

Study p. 120.

Once the RAF has paid the third party for damages he/she sustained during a hit-and-run accident, it is entitled to cession of the third party’s claim against the wrongdoer.
Activity 1

1. (a) Which document must be submitted before a case resulting from a so-called "hit-and-run" accident will be heard by court? Discuss.
   (b) What must be proven by the claimant in order to be successful in such a court case?

2. When will a "hit-and-run" claim against the RAF become prescribed?