PROTECTION AND TERMINATION OF OWNERSHIP

- Van der Walt & Pienaar Chapters 10 and 11
- Case law as discussed in the textbook.
Learning outcomes of this Unit

After studying this unit the learner must be able to:

• **Distinguish** between real remedies, delictual remedies and enrichment remedies.

• **Discuss** and apply the legal principles applying to the *rei vindicatio* including defences.

• **Name and briefly describe** the following limitations on the *rei vindicatio*:
  – Sec 26(3) of the Constitution
  – Estoppel
  – stolen goods
Learning outcomes (Cont..)

- **Discuss and apply** estoppel with reference to its requirements and relevant case law.
- **Define** the following delictual remedies, and discuss and apply the legal principles involved:
  - actio ad exhibendum
  - condictio furtiva
  - Actio legis Acquiliae
- **Discuss and apply** the requirements for an enrichment action.
- **Name and briefly describe** the way in which ownership can be terminated.
PROTECTION AND TERMINATION OF OWNERSHIP

• INTRODUCTION

• 3 Categories
  – Property law: restoration of entitlements
  – Delictual: compensation for damages
  – Enrichment: recovery of performance
• **Rei vindicatio**
  - Definition
  - Requirements
  - Defences
  - Limitations
  - Estoppel
  - Case Law

Action whereby **Owner** can recover **existing and identifiable** thing from person in **unlawful control**

Requirements not met
Lien
Occupier LRL
Estoppel

• Requirements
  – owner creates false impression
  – ownership transferred or right to transfer on his behalf; mere transfer of control is not enough!
  – culpably (intention or negligent)
  – controller relied on impression to his detriment (prejudice)
  – Representation was sustainable

• Effect: defence against rei vindicatio (Not used as cause of action (eg damages))
Case Law

Grosvenor Motors (Potchefstroom) v Douglas
- cheque is not credit sale
- payment of purchase price rule not met
- document of sale does not create impression of transfer

Johaandien v Stanley Porter (Paarl)
- negligence is requirement

Kia Motors(SA)(Edms) (Bpk) v Van Zyl en A
- delivered knowing it will be displayed
- created impression of transfer of ownership
- supplied trade guarantee, omitted to notify public and defendant
- estoppel upheld
Actio negatoria (read)

Interdict and Declaratory order

- Definition
- Requirements
DELICTUAL REMEDIES

- **Actio ad exhibendum**
  - O against C fraudulently lost physical control value claimed
  - O against thief/heirs thing or highest value since theft

- **Condictio furtiva**

- **Actio legis Aquiliae**
  - Definition
  - Requirements
  - Effect
  - destroyed/damaged unlawfully & culpably damages
**Sui generis remedy**

- **ENRICHMENT ACTION**
  - Definition
  - Requirements
    - enrichment of defendant
    - impoverishment of owner
    - at expense (causal relationship)
    - *sine causa*
    - *(bona fide alienated or consumed)*

**Extent of claim**
TERMINATION OF OWNERSHIP

- Death of owner
- Destruction of thing
- Termination of legal relationship
  - Transfer
  - Loss of physical control
  - Operation of law

Self Study Section
Homework activity

• What is the aim of the rei vindicatio? In which circumstances may damages be claimed with the rei vindicatio?
• Name and discuss the requirements for a successful defence of estoppel, with reference to case law.
• What purpose does the actio ad exhibendum serve in our law today?
• Against whom may the condictio furtiva be instituted and under what circumstances?
• Discuss the extent of the actio legis Aquiliae as a remedy for the protection of ownership.
• What is the meaning of sine causa in the context of an enrichment action?
• What are the requirements for termination of ownership in the case of res derelictae?