

# Personal injury claims, in terms of Regulation 6(10)(c)



Author acknowledgement  
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2026/2027 PVT Structured Coursework Programme



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# GUIDE FOR PERSONAL INJURY CLAIMS

## Regulation 6 (10)(c)

### FIFTEEN GUIDES

There are fifteen guides for practical vocational training of candidate attorneys. This guide deals with the Personal Injury Claims module in regulation 6(10)(c).

### OVERVIEW

On 20 September 2014 Parliament assented to the Legal Practice Act 28 of 2014 (LPA). In terms of section 4 of the LPA, the Legal Practice Council (LPC) was established on 31 October 2018. The following day, on 1 November 2018 the bulk of the rest of the LPA came into effect.

The Legal Practice Act regulates all legal practitioners whether on the practising roll or the non-practising roll. There are three forms of legal practice. They are an attorney, an advocate and an advocate with a Fidelity Fund certificate: see section 34 of the LPA.

Under section 109(1)(a) of the LPA, the LPC published GN R921 in GG 41879 of 31 August 2018, as amended by GN R3779 in GG 49104 of 11 August 2023. The compulsory course work required in the regulations for candidate attorneys was standardised by the LPC in terms of the Norms and Standards. Regulation 6(10) reads:

“(10) The programme of structured course work referred to in sub-regulation (1)(a) and (b) must be standardised and uniform throughout the Republic and comprise the following modules:

- (a) constitutional practice;
- (b) professional legal ethics;
- (c) **personal injury claims**;
- (d) high court practice;
- (e) magistrate’s court practice;
- (f) criminal court practice;
- (g) labour dispute resolution;
- (h) alternative dispute resolution;
- (i) attorneys’ bookkeeping;
- (j) wills and estates;
- (k) matrimonial law;
- (l) legal costs;
- (m) drafting of contracts;
- (n) information and communication technology for practice, and associated aspects of cyber law; and
- (o) introduction to practice management.”

The LPC published the Norms and Standards on 11 December 2020 in Government Gazette 43981 under section 3 (g)(i) read with section 6(1)(b)(i) and section 95(1)(n) of the LPA.

Regulation 6(10) requires candidate attorneys to be trained in the modules listed above. The similarity between regulation 6(10) for candidate attorneys and regulation 7(9) for pupils is not an accident. Section 32 of the LPA permits legal practitioners at any time, as determined in the rules and upon payment of the fee determined by the LPC, to apply to the LPC to convert their enrolment as attorneys to that of advocates and *vice versa*. Consequently, the training of candidate legal practitioners must allow for seamless section 32 conversions.

Each guide *per* module deals with the requirements in regulation 6(10). Examiners are required to set questions drawn only from the latest LPC candidate attorneys' curriculum and reading list. The combined curriculum and reading list is referred to as the "syllabus".

Each of the fifteen guides will assist training supervisors, mentors, busy legal practitioners and candidate attorneys to navigate the syllabus. The focus of the syllabus is on practical vocational training.

## **INTRODUCTION TO EACH GUIDE**

Each guide *per* module in Regulation 6(10) is designed to assist candidate attorneys to understand, in real time, the minimum necessary under practical vocational training to become effective attorneys in practice. The essence of effective legal practitioners is the ability to read, to assimilate legal principles from that reading and to apply those principles to the facts of your client's case and in argument before courts, tribunals, disciplinary bodies, and any other forms of formal gatherings and meetings.

The guides avoid prolixity.  
However each guide requires dedicated concentration.

For the examinations, candidate legal practitioners (candidate attorneys and pupils) must be up to date with the latest Constitutional Court and Supreme Court of Appeal cases to within one week before the date of each exam.

The guides do not rehash what you studied at University. Your LLB proves your capability. This guide will assist you to prepare for the LPC admission examinations. More importantly, this guide will also equip you to be an effective, competent, calm and (reasonably) confident attorney when you enter the legal profession.

## **REQUEST TO CANDIDATE ATTORNEYS FOR DUE DILIGENCE**

Please read this guide attentively.

Please carry out all recommended court attendances.

Please carry out all the recommended practical exercises.

Please complete reading all the material in the LPC reading list.

Please note the notional hours to complete all 15 guides are 400 hours.

Please note this guide, like the other fourteen guides, is sufficient for self-study.

Please remember, the exams are based on the LPC's most up to date reading list.

- Currently the most up to date syllabus dates from 28 March 2025: Notice 3086 of 2025 published in Government Gazette 52388.
- Matters omitted from the LPC reading list will not be in the examinations unless the statute, case or article under question is included in your exam paper and you are allowed extra reading time to consider that statute, case or article.
- Matters mentioned in the LPC reading list are the subject of exam questions.
- You will be required to answer the exam questions from the perspective of:
  - Facts first
  - Law later
- The LPC exams, also referred to as assessments, are practical in nature.
- The questions will proceed from the following perspectives: –
  - What would you, as attorney of record, advise your client to consider?
  - What would you, as attorney of record, advise your client to do?
  - When and why would you refer a matter to another attorney or to counsel?
  - And similar practical questions.

**REFERENCES**

One of the products of Juta & Co Ltd is Jutastat. Most of the notes to this guide are downloaded from Jutastat. Please read the notes with care and diligence. This guide also relies on the Southern African Legal Information Institute (SAFLII).

SAFLII is free and open access on the Internet.

**NOTE WELL**

The sequence of this guide follows the sequence in the most recent LPC PVT syllabus of 28 March 2025 for candidate attorneys. The fifteen guides are designed to be updated when the LPC so requires. Bullet points below are drafted to assist you to grasp the material in the reading list. You must decide whether to accept or to amend the bullet points to suit your understanding. **When there are no bullet points, you need nonetheless to read the rule or case to prepare for your exams.**



LEGAL PRACTICE  
COUNCIL

**LPC SYLLABUS AND THE OFFICIAL SOURCE FOR ALL EXAMINATION QUESTIONS AT  
THE LPC ATTORNEYS' ADMISSION EXAMS**

<b>CURRICULUM AND COURSE CONTENT</b>	<b>READING LISTS</b>
<p>Introduction to personal injury law.</p> <p>How to plead a claim in Delict.</p> <ul style="list-style-type: none"> <li>• Wrongfulness</li> <li>• Fault</li> <li>• Causation</li> <li>• Damages</li> </ul> <p>Road Accident Fund law.</p> <p>Consumer protection law.</p> <p>A module on medical negligence claims.</p> <p>Pleadings and defences allowed under the law of Delict.</p> <p>Pleadings must comply with the rules of the High Court and Magistrates' Courts set out under Regs 6 (10)(d) and 6 (10)(e) below.</p> <p>Section 60 in Part VI of the Code of Conduct concerning RAF matters.</p> <p>Trial preparation, practice, and settlement are part of High Court and Magistrates' Court curricula.</p> <p>The practice directives peculiar to personal injury cases, including RAF claims.</p> <p><b>NOTE WELL:</b> Practice Directives will not be examined unless a copy of the relevant directive is supplied to candidates writing the exams.</p>	<p>Road Accident Fund Act 56 of 1996</p> <p><i>Access to court – time bar</i> <i>Engelbrecht v RAF</i> 2007 (6) SA 96 (CC) at paras [23] to [45]</p> <p><i>Causation</i> <i>Road Accident Appeal Tribunal v Gouws</i> 2018 (3) SA 413 (SCA) at paras [32] to [40] <i>Nonkwali v Road Accident Fund</i> 2009 (4) SA 333 (SCA) at para [8]</p> <p><i>Claimants</i> <i>RAF v Vogel</i> 2004 (5) SA 1 (SCA) at para [24] <i>Du Plessis v RAF</i> 2004 (1) SA 359 (SCA) at paras [11] to [16] and [42] and [43] <i>RAF v Ngubane</i> 2008 (1) SA 432 (SCA) at para [12]</p> <p><i>Contingency</i> <i>Ronald Bobroff &amp; Partners Inc v De La Guerre</i> 2014 (3) SA 134 (CC) <i>Masango v RAF</i> 2016 (6) SA 508 (GJ) <i>TM obo MM v MEC for Health, Mpumalanga</i> 2023 (3) SA 173 (MM)</p> <p><i>Hit and run (lodge within two years)</i> <i>Geldenhuis &amp; Joubert v Van Wyk; Van Wyk v Geldenhuis &amp; Joubert</i> 2005 (2) SA 512 (SCA) at paras [23] and [28] and [30]</p> <p><i>Employee</i> <i>RAF v Monjane</i> 2010 (3) SA 641 (SCA) at para [12]</p> <p><i>Prescription</i> <i>RAF v Mdeyide (Min of Transport Intervening)</i> 2008 (1) SA 535 (CC) at paras [35] to [46] <i>RAF v Masindi</i> 2018 (6) SA 481 (SCA) at paras [19] to [21] <i>Jones v Road Accident Fund</i> 2020 (2) SA 83 (SCA) at paras [17] to [23] <i>Van Zyl NO v Road Accident Fund</i> 2022 (3) SA 45 (CC) at paras [126] and [127] – mental incapacity</p> <p><i>Road Accident Fund</i> <i>RAF v Legal Practice Council</i> 2021 (6) SA 230 (GP) – headnote only</p> <p><i>Single vehicle collision</i> <i>Road Accident Fund v Abrahams</i> 2018 (5) SA 169 (SCA) at especially para [13]</p> <p><i>Tribunal</i> <i>Road Accident Appeal Tribunal v Gouws</i> 2018 (3) SA 413 (SCA) – headnote</p>

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## PERSONAL INJURY CLAIMS

### Introduction

Two of the most common causes of action you are likely to come across in your practice are Contractual claims and Delictual claims.

Here we deal with Delictual claims; in particular personal injury claims. These can be split into two categories, common law claims for personal injury and Claims for injury sustained in a motor vehicle collision; which will be a claim against the Road Accident Fund (RAF).

Claims for medical negligence have increased and you are very likely to deal with such claims. Note that medical negligence claims can also be brought for breach of contract. Where this is possible, then sue in a Delictual action as an alternative.

### Material Terms of the RAF Act 56 of 1996 (as amended)

You are expected to read the RAF Act and be able to make claims against the fund on behalf of a client who suffered loss or damage wrongfully caused by the driving of motor vehicles. The following are the material provisions you must be familiar with:

- Always read section 1, the definitions, before you read the other sections.
- Section 17 – this section is important and provides for the fund to compensate any person for any loss arising out of the driving of a motor vehicle. Note that the section is written in wide terms. You are expected to study the whole of this section.
- Sections 18 and 19 – important sections, dealing with limitation of liability.
- Section 20 – deals with certain presumptions, be familiar with this.
- Section 21 – this section abolished certain common law claims.
- Section 22 – provides for the submission of information to the fund. Please take note of the prescribed forms and time frames.
- Section 23 – an important section for attorneys as it deals with the crucial issue of prescription of the claim.
- Section 24 – you must read and understand this section as it deals with procedure. It provides for a prescribed form and medical reports.

### Cause of Action

We know that, irrespective of what type of claim your client may have, client must plead a sustainable “cause of action” in their particulars of claim. It is important for you to understand what is meant by a “cause of action”.

What is the cause of action?

- Set of **facts** giving rise to a claim recognised by law.
- The **facts** that the law recognises as giving you a claim.

Note: it is about the **facts**.

Cause of action is not some legal technical requirement understood by few and being capable of being drafted by fewer still. It is quite simply about the material facts of your case.

### Delictual Claims

You must understand how to present your cause of action in a claim for personal injury, be it at common law or statutory law (RAF claim). What are the material facts that you will have to plead and prove in order to sustain a cause of action in delict?

### The Five Elements of a Delict in South African Law

In South African law a plaintiff must plead and prove the following five elements in order to sustain a claim in delict:

Conduct

Wrongfulness

Fault (intention or negligence)

Causation (factual and legal)

Harm or damage

These elements must be pleaded as material facts. A failure to plead any one of these elements renders the particulars of claim excipiable.

### Conduct

There must be a voluntary human act or omission. An omission will only give rise to liability where there was a legal duty to act.

### Wrongfulness

Wrongfulness concerns the legal reprehensibility of the conduct. It is not concerned with fault. In cases involving physical injury, wrongfulness is generally presumed. In cases involving omissions or pure economic loss, wrongfulness must be positively established by showing that public policy and the legal convictions of the community (*boni mores*) require that liability be imposed.

### Fault

Fault takes the form of intention (*dolus*) or negligence (*culpa*). In most personal injury matters, negligence is relied upon.

### Negligence is established if:

A reasonable person in the position of the defendant would have foreseen the reasonable possibility of harm;

The reasonable person would have taken steps to prevent such harm; and

The defendant failed to take such reasonable steps.

### Causation

Causation consists of two enquiries:

Factual causation – whether the harm would have occurred but for the conduct of the defendant.

Legal causation – whether the harm is sufficiently closely connected to the conduct to justify the imposition of liability. This involves considerations of remoteness, reasonableness and fairness.

### Harm or Damage

The plaintiff must prove actual damage. In personal injury claims this includes bodily injury, pain and suffering, medical expenses, loss of earnings and loss of earning capacity.

### The essential elements (the material facts) (After Section 24)

#### Requirements for a Valid RAF Claim

For a claim to succeed under the Road Accident Fund Act 56 of 1996, the following jurisdictional facts must be present:

The harm must arise from the driving of a motor vehicle;

The driving must have occurred on a public road;

The injury must have been caused by the negligence or other wrongful act of the driver or owner;

The claimant must have suffered loss or damage as a result.

If any one of these elements is absent, the claim cannot succeed.

### Serious Injury Requirement (General Damages)

In terms of the RAF Act and its Regulations, a claimant may only recover general damages (pain and suffering, loss of amenities of life, disfigurement and emotional shock) if the injury is assessed as a “serious injury”.

The assessment is conducted by a medical practitioner who completes the prescribed RAF 4 form.

An injury qualifies as serious if:

It results in 30% or more Whole Person Impairment (WPI); or

It meets the narrative test, which includes serious long-term impairment, permanent serious disfigurement, severe long-term mental disturbance or loss of a foetus.

If the Fund rejects the serious injury assessment, the claimant may appeal to the Road Accident Fund Appeal Tribunal.

Without a valid serious injury assessment, a claim for general damages will fail.

### Section 17(4)(a) Undertaking

Instead of paying a lump sum for future medical expenses, the Fund may furnish an undertaking in terms of section 17(4)(a) to compensate the claimant for the costs of future accommodation in a hospital or nursing home, treatment or services or goods arising from the injury.

The undertaking obliges the Fund to reimburse such expenses after they have been incurred and upon proof thereof.

It is important to distinguish between:

A lump sum award (paid immediately), and

A statutory undertaking (reimbursement mechanism).

Let us look at the essential elements of a typical claim in delict; for recovery of damages caused by negligence.

- Plaintiff will have to establish the facts that show, in the circumstances, that defendant owes plaintiff a duty of care.
  - Such a duty of care arises:
    - a) Where there is a relationship of proximity between them;
    - b) It is reasonably foreseeable that defendant's negligence might cause harm to plaintiff; and
    - c) It is fair, just and reasonable to impose a duty of care on defendant.
  - Defendant negligently breached the duty of care. You have to describe the incident your client relies on with as much accuracy and as close to the version as possible. The reason for this is that you will have to justify each incident or component of the incident as being a breach of the duty of care.
  - In personal injury cases, such as medical negligence, you must give details of exactly what your client says *is* the duty of care, to do what or refrain from doing what? Particulars of the incident your client relies on must be drafted with care as it is the basis of your claim and will be led in evidence.
  - Plaintiff, as a consequence, suffered injury, loss and damage;
  - Such loss and damage were caused by defendant's negligence;
- On the issue of causation, read the following judgements:
- Road Accident Appeal Tribunal v Gouws* 2018 (3) SA 413 (SCA) at paras [32] to [40]
- Nonkwali v Road Accident Fund* 2009 (4) SA 333 (SCA) at para [8]
- Read paragraph [8] of the judgement on the cause of action and scope of one's cause of action.
- The loss is not too remote; it was reasonably foreseeable, both in its nature and causation.
  - Where plaintiff claims for damage or loss to property; plaintiff must be the owner of the property or it must be alleged that the risk in the property passed to plaintiff.

Note that in certain cases it will not be necessary to state that defendant owed plaintiff a duty of care; this will be inferred from the facts. Thus, if plaintiff and defendant were driving on the same public road when a collision occurred; as a matter of law the parties owed a duty of care to all other

users of the road including each other. Similarly, in a claim based on unlawful assault it is not necessary to state that defendant owed plaintiff a duty of care not to commit assault.

With RAF cases, our courts had this to say about a claim:

*The stated primary concern of the Legislature in enacting these statutes is, and has always been, 'to give the greatest possible protection . . . to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle'*

### The consequences of breach

In personal injury cases it is important for you to set out the consequences of the negligent breach of the duty of care.

- State what the consequences of negligent breach entail. Such as that plaintiff suffered injury, giving full details of such injury. That plaintiff's property was lost or damaged giving details of such loss.
- Here we refer you to Rule 18 (10) of the uniform rules. You have to comply by giving full details of the injury, loss or damage.
- It is an important part of your particulars to clearly set out details of the consequence of defendant's conduct. Note that the loss or damage you set out *must* be shown to have been caused directly by the conduct of defendant. The damage must not be too remote.
- When detailing with consequences of personal injury, you will rely on an expert's report. Again, do not merely attach the report, give a description then refer to the report; make certain there are no contradictions.
- What is required is all the facts which you want the judge to consider in determining an award for pain, suffering and loss of amenities of life.

This is what you must include in your particulars of claim:

- a) A list of the injuries actually suffered;
- b) The treatment for the injuries;
- c) Plaintiff's current condition; state the degree of recovery and the lasting loss of amenities;
- d) What is the prognosis; and
- e) State other relevant facts e.g. plaintiff's way of life (before and after injury); his occupation and how the injury impacts on this.

Then you have to deal with the Quantum of your client's damages.

- You have to state the amount of the claim. Here set out exactly how the amount is arrived at. In personal injury cases you may use the experts report to assist you in quantifying the damages.
- You have to comply with Rule 18 of the Uniform rules.
- Where you claim for loss of property such as a motor vehicle, you have to state a figure and how you arrived at it; the judge will require assistance in arriving at a fair value. All that is required is for you to state that the amount claimed represents a reasonable value for a vehicle of that model. The value can be obtained from an expert. If you do not want to incur the cost of an expert at this stage, make a reasonable estimate. Should your opponent dispute the amount, you will file a notice to call an expert. In the event that the expert disagrees with your estimate, no harm is done as you can amend the amount in your particulars. Similarly, where you claim for the cost of repairs; an expert will give you an itemised quotation.
- With certain types of cases; such as personal injury cases and a claim for loss of earnings or profit the amount claimed will be the sum total of many individual itemised heads of damage. This is typical of claims for personal injury. Here we recommend that you prepare a separate schedule of all the items and their respective amounts. This schedule can be annexed to the particulars of claim. In your particulars you merely state that the amount claimed is made up as detailed in "*Annexure C*".
- The amount of your claim must be an amount you can defend or justify in evidence if called upon to do so. The amount must be such that a judge's prima facie view will be to think that the amount is reasonable and justifiable and will be inclined to agree with it. Besides, with an inflated amount, your client might come under an unreasonable expectation; only to feel let down when the judge pronounces on the claim. We do not recommend the practice of claiming an inflated amount; in the hope that the parties will settle on a higher amount than one would expect. This practice is frowned upon by judges; and you will discredit yourself and your firm.

### Heads of Damages in Personal Injury Claims

- Damages in personal injury matters are generally divided into:
- Past medical and hospital expenses
- Future medical expenses
- Past loss of earnings
- Future loss of earning capacity
- General damages
- Past loss is calculated from the date of injury to trial.
- Future loss is calculated actuarially and subject to contingencies.
- Contingencies represent the normal vicissitudes of life, such as illness, unemployment or early death. The court exercises a discretion in determining the appropriate deduction.

### Pleading a Defence

You must read and understand Rule 22 of the uniform rules. You are expected to answer the substance of the plaintiff's claim and a mere denial of the material facts will be of no assistance.

The rule requires that when you plead to plaintiff's particulars of claim, you admit a fact; deny a fact; confess and avoid and state the defence defendant will rely on. Note where you have instructions to deny a fact, always ask your client for the factual basis for such denial. Then plead that defence. Do not indulge in bare denials, they are unhelpful in court. You will have to set out your client's version of what happened. This is what gives your client a defence. Please remember, in setting out your client's version; make certain that the version is not improbable or implausible. If your version is improbable when considered in the light of the undisputed facts and the general circumstances of the case; the judge will reject it and you lose.

### Special Pleas in Personal Injury Matters

In addition to pleading over on the merits, a defendant may raise special pleas, including:

- Prescription
- Lack of jurisdiction
- Non-compliance with section 24 of the RAF Act
- Failure to lodge the claim within the statutory period
- Lack of serious injury assessment
- A special plea must be clearly and separately pleaded.

### The Pre-trial Procedures

All our courts have a system of trial certification. Firstly, all the requirements pertaining to discovery, filing of expert notices and summaries and pre-trial conferences must be complied with. Please consult the practice directives in the division where you are practicing. (Note that you will not be assessed on practice directives and their contents.) The experts to be called by the parties must meet, in the absence of the attorneys, and file a joint minute of the meeting. If this is not done, your application for a trial date will be declined.

In all personal injury cases, the courts insist on separating merits and quantum in terms of rule 33. Please consult your principal and find out exactly how this is achieved. Make sure that you understand how pre-trial and case conferences are conducted in personal injury cases.

Please take note that personal injury cases, in particular, RAF cases and medical negligence claims have dominated the trial roll for many years and will continue to do so.

### Medical Negligence Claims

In medical negligence claims the plaintiff must establish that:

- A legal duty of care existed between medical practitioner and patient;
- The practitioner breached the applicable standard of care;
- The breach caused the injury;
- The plaintiff suffered damage.

- The standard of care is that of a reasonable practitioner in the same field of specialisation.
- Expert evidence is essential in such matters. A court will not infer negligence without proper expert testimony.
- Informed consent is also central. A medical practitioner must inform a patient of material risks associated with a procedure. Failure to do so may constitute negligence.
- Hospitals and provincial departments of health may be held vicariously liable for negligent acts of their employees.

Therefore, with regard to these cases, every division of the high court has a set of applicable directives. You must comply. Note that our courts are being overwhelmed with RAF cases as well as medical negligence cases, the directives are there to manage the roll more effectively and to reduce backlogs.

In Gauteng province, the directives call for a mediation protocol to be complied with, before the parties may apply for a trial date. Obtain this protocol and comply with it. Note that these directives are amended from time to time, you have to keep up with the changes.

### ADR

All attorneys are expected to be less adversarial and more cooperative and must be focused on resolving the dispute quickly and cheaply.

To this end we have Rule 41A of the uniform rules. Please read this rule, we also deal with it in the guide for High Court Practice. In effect, our courts have introduced court annexed mediation. No litigant may refuse to comply with this rule.

Always apply your mind to the possibility of mediation and settlement. The rules and directives will assist you in achieving this.

### Section 60 in Part VI of the Code of Conduct

This part of the Code is important as it deals with the conduct of legal practitioners and candidate legal practitioners in relation to appearances in court. Please read and be familiar with this part of the code. Look at section 60, it deals with abuse of process and it applies to personal injury cases.

### Prescription and Time Bars

In RAF matters, prescription is governed primarily by section 23 of the RAF Act.

In identified vehicle claims, the claim prescribes three years from the date upon which the cause of action arose.

In hit and run matters, the claim must be lodged within two years.

### Prescription begins to run when the claimant has knowledge of:

- The identity of the debtor; and
- The facts giving rise to the claim.
- Mental incapacity may delay prescription.
- Failure to comply with statutory time periods may result in the claim being extinguished.

### Contingency Litigation

You have to be familiar with how contingency litigation is conducted. Every RAF claim and medical negligence claim you get, will be dealt with on a contingency. This means, in effect, that your firm will fund the litigation and will be paid a percentage of the judgement amount after successfully obtaining an order in favour of client and getting paid by the defendant.

The Contingency Fees Act 66 of 1997 applies. Please read sections 2 and 3 as it deals with a contingency fee agreement that your firm will enter into with client. (A contingency fee agreement may not exceed 25% of the total amount awarded or double the normal fee, whichever is the lesser. The agreement must be in writing and must comply strictly with sections 2 and 3 of the Contingency Fees Act. Non-compliance may render the agreement invalid.) Talk to your principal and find out how the firm conducts contingency litigation. Look at a copy of a contingency fee contract currently being used.

Make a note of Section 2(1) of the act, it provides that your firm may enter into a contingency fee agreement, where the firm is of the opinion that *there are reasonable prospects that the client may be successful in any proceedings*. (emphasis added). This means that you are not to enter into such an agreement where the client's merits are poor. The firm usually carries out a "Risk Analysis" to evaluate the client's merits. Where there is a risk that client will lose the case, then the firm cannot take the matter on a contingency agreement. If client insists on proceeding, then the client will have to fund the case.

You must read the following decisions on contingency litigation:

*Ronald Bobroff & Partners Inc v De La Guerre* 2014 (3) SA 134 (CC)

*Masango v RAF* 2016 (6) SA 508 (GJ)

*TM obo MM v MEC for Health, Mpumalanga* 2023 (3) SA 173 (MM)

### Consumer Protection and Personal Injury

In certain cases personal injury may arise from defective goods.

The Consumer Protection Act provides for strict liability against producers, importers, distributors or retailers for harm caused wholly or partly as a consequence of supplying unsafe goods, product failure, defect or hazard.

Liability under the Act does not require proof of negligence.

### The claimant must prove:

- The goods were defective or unsafe;
- The defect caused the injury;
- The claimant suffered harm.
- This provides an alternative cause of action to common law negligence.

### Case Law

It is an important part of your vocational training to learn how to find and use judgements. The latter represents primary authority which can be binding on a judge and therefore essential when presenting your case. To this end we expect you to read all the cases, concentrating on the paragraphs recommended in your list, and understand the legal principle and know how to apply the law to the facts of your case.

A useful exercise will be for you to look at some personal injury files in your office. Obtain the facts of that case. Then attempt to draft the particulars of claim, on your own and without copying from the office precedent. Then compare your work with the particulars that the firm drafted and served and filed. How did you do?

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