THE LIMITING EFFECT OF *DAFFY v DAFFY* 2013 1 SACR 42 (SCA)

1 *Introduction*

The preamble of the Domestic Violence Act 116 of 1998 recognises, *inter alia*:

> "that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships; and that the remedies currently available to the victims of domestic violence have proved to be ineffective."

Domestic violence is a social evil that often occurs behind closed doors. In *S v Baloyi* the constitutional court indicated that:

> "All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often concealed and so frequently goes unpunished" (2000 2 SA 425 (CC) 431C).

The Domestic Violence Act was enacted to accommodate the growing number of domestic violence incidents and to rectify the shortcomings of the Prevention of Family Violence Act 133 of 1993. One aspect governed more extensively in terms of Act 116 of 1998 is the categories of persons who can apply for a protection order. In this regard, Act 116 of 1998 provides an extensive definition of a "domestic relationship". This note will provide a critical evaluation of *Daffy v Daffy* (2013 1 SACR 42 (SCA)) with specific reference to the supreme court of appeal's view that the brothers in question were not in a domestic relationship. It will be argued that the decision has a limiting effect and defeats the purpose of Act 116 of 1998, which was to provide protection to a broader ambit of persons. In order to illustrate this argument, reference will be made to several consequent issues pertaining to the argument presented above. Recommendations will also be provided.

2 *Facts*

The matter involved two brothers (both businessmen) who did not share a common household. Much of the dispute involved their interests in Core Mobility (Pty) Ltd. The appellant (Cristopher Redden Daffy) had worked at Core Mobility for a period of about ten years until a disciplinary enquiry resulted in the termination of his employment. Prior to the termination of his employment, the relationship between the brothers soured, with the respondent (Stephen Redden Daffy) suspecting the appellant of committing irregularities and abusing his position. This resulted in arguments between them and on one occasion the appellant threatened to assault and financially ruin the respondent (par 4). On the advice of his attorney, the respondent instituted a disciplinary inquiry, which the appellant did not attend and he was consequently dismissed. The appellant contended that he held 50% of the company's shares and launched high court proceedings for an order declaring that to be the case. Relying on those proceedings, it was argued by the respondent that the papers that were served upon him at work illustrated a course of conduct by the appellant which, together with certain threats and other conduct relevant to the company and their business relationship, justified a protection order being granted in his favour (par 3).

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There is quite a bit of history regarding the litigation between the parties. The respondent initially applied for an interim protection order against the appellant in the Randburg magistrate's court. The appellant opposed the confirmation of the interim order and after several postponements, the matter went to trial. After hearing evidence it was found that the respondent failed to make out a case. The respondent then proceeded to appeal, which was upheld and resulted in the confirmation of the protection order. With leave to appeal, the appellant sought to set the protection order aside on the grounds that the dispute between them was of a commercial nature and not a matter that ought to be dealt with in terms of Act 116 of 1998 (par 1 and par 5).

3 *Judgment*

In order to obtain a protection order in terms of Act 116 of 1998, the complainant and the respondent have to be in a domestic relationship. A domestic relationship refers to, *inter alia*, a relationship between a complainant and respondent where they are family members related by consanguinity, affinity or adoption (see s 1 of Act 116 of 1998 which provides the definition of a "domestic relationship"). Thus, because they were brothers, the respondent argued that they were in a domestic relationship and, therefore, that he qualified as a complainant in terms of the act.

The supreme court of appeal, however, did not agree. According to the court, the provision is broadly formulated, in that no degree of relationship, consanguineous or otherwise, is mentioned. Also, the concept of "family" is extremely wide (par 7). To illustrate, it was questioned whether distant cousins, who have nothing in common other than sharing a mutual ancestor, would qualify as being in a domestic relationship. To the court's mind, this question could not be answered in the affirmative (par 7). The court's dissatisfaction with the broad nature of the definition resulted in the court attempting to answer how the provision should be interpreted. As far as the interpretation of legislation is concerned, it was said that the underlying purpose of a provision has to be considered in order to avoid a purely literal meaning that would result in absurdity (par 8). Placing reliance on the *Baloyi* case, it was highlighted that the concept of domestic violence is commonly understood as being violence within the confines of the family unit, which is often hidden from view by reason of the helplessness of the victim and the position of power of the abuser. Furthermore, the common meaning of "domestic" pertains to the home, house, or household, in other words, one's home or family affairs (with reference to the *Shorter Oxford English Dictionary on Historical Principles* (6 ed) – par 8). "Family", according to the court, has as one of its general connotations "the body of persons who live in one house or under one head, including parents, children, servants etc". Thus, if one has regard to the ordinary connotation of a "domestic relationship" it would involve persons who share a common household (with reference to the *Oxford English Dictionary* (2 ed) – par 8).

While the court acknowledged that the legislature envisaged that the definition bear a wider meaning than the above for purposes of the act, it was not, in the court's opinion, intended that a mere blood relationship, even if close, would in itself be sufficient (par 8). Accordingly, adhering to a definition "regardless of subject-matter and context might work the gravest injustice by including cases which were not intended to be included" (par 8).

Furthermore, other provisions under the definition of a domestic relationship require some form of association other than mere consanguinity to be regarded as a domestic relationship (par 8). Thus, the definition is poorly framed and incapable

of bearing a precise meaning. While stating this, the supreme court of appeal nevertheless found it unnecessary to attempt to determine what would be required for such a relationship to be regarded as a domestic relationship (par 9). In *casu* the respondent relied solely on the fact that he and the appellant are brothers, which in itself was according to the court, insufficient. Taking into account their respective ages and the fact that they had not shared a common household for many years, the court held that it would be absurd to conclude that the mere fact that they were brothers resulted in them being in a "domestic relationship" for purposes of the act (par 9). Since the respondent failed to show that he was in a domestic relationship, he was not entitled to rely on the protection afforded in terms of the act. Although the respondent failed in this, the court nevertheless addressed why the respondent also failed to show that there was domestic violence. Thus, even if the respondent had managed to convince the court that he was in a domestic relationship with the appellant, he would have failed on this ground. This aspect, however, is not relevant for purposes of this note and will not be discussed further other than to mention that the appeal was upheld.

4 *Analysis of the judgment and consequent aspects*

The act was enacted as a means to combat the inadequate remedies available to victims of domestic violence in terms of both the common law and the Prevention of Family Violence Act (Kruger "Addressing domestic violence: to what extent does the law provide effective measures?" 2004 *JJS* 156; Gadinabokao *Shortcomings of the South African Domestic Violence Act 116 of 1998 in Comparative Perspective* (2016 LLM diss UP) 11). Another result the act aimed to achieve was to broaden the ambit of persons to which the act applied. Unlike the Prevention of Family Violence Act, which focused on parties who are or were married to each other, but also heterosexual cohabitants, Act 116 of 1998 has a much broader ambit (Kruger 160; Gadinabokao 11).

4.1 Domestic violence among siblings

There is no universally accepted definition of sibling violence regardless of the fact that it may be the most prevalent form of family violence (Le Roux-Kemp "Intra-family violence or domestic violence, a domestic relationship or merely a case of sibling rivalry: where to draw the line? 2013 *Internal Review of Law* 2; Eriksen and Jensen "A push or a punch: distinguishing the severity of sibling violence" 2009 *Journal of Interpersonal Violence* 183; Button and Gealt "High risk behaviours among victims of sibling violence" 2010 *J Family Violence* 131). Simonelli *et al* mentioned that a reason why sibling violence may be overlooked is because it is so common and is therefore rarely viewed as family violence and it is sometimes dismissed by parents as sibling rivalry ("Abuse by siblings and subsequent experiences of violence within the dating relationship" 2002 *Journal of Interpersonal Violence* 105-106). Furthermore, violence among siblings also appears to be the least studied (Eriksen and Jensen 183, Le Roux-Kemp 2). The law commission recommended that the term "family" be defined to include siblings and in-laws who share a common residence or a similar close relationship. Based on this, Le Roux-Kemp argues that, if one has regard to this aspect, the supreme court of appeal's statement that more than a mere blood relationship is required seems to be correct (7). However, while this may be so, and the law commission recommended it, Act 116 of 1998 itself does not contain a definition of family.

4.2 Extent of protection

The court mentions in the case "that some form of association other than mere consanguinity" is required in the remainder of the definition, but fails to elaborate what this other form of association entails. It is submitted that this was an oversight on the part of the court, since if one has regard to some of the other categories under the relevant definition, it is not apparent what the additional "requirements" could be. The failure on the part of the court to elaborate is unfortunate, more so since the court indicates that it was not necessary to determine the exact meaning of the definition. This is problematic in that this could impact the remainder of the categories, since it does not focus only on a relationship by blood, but affinity and adoption as well.

Affinity is the relationship that arises by virtue of marriage. In the context of family law, the rules dictate which relatives of one's ex-spouse you are prohibited or allowed to marry. According to article 8 of the Political Ordinance of 1580, you are not permitted to marry any of your ex-spouse's relatives in the direct line (ascendants and descendants). (See Heaton and Kruger *South African Family Law* (2015) 28.) Marriage between those persons who are related through affinity in the collateral line (blood relations who share a common ancestor but are not ascendants and descendants of one another) is not prohibited (Heaton and Kruger 28 who refer to s 28 of the Marriage Act 25 of 1961). In essence, affinity is the relationship that is created between a spouse and the blood relations of the other spouse. Thus, affinity refers to one's "in-laws". Based on the court's interpretation of blood relationships, that would mean that, in order to rely on Act 116 of 1998, in-laws would have to share a common household in order to rely on the protection in the act, unless the need for sharing a common household is not relevant in the context of a relationship that arises through affinity. It would therefore be interesting to see how this aspect will be interpreted in future, since it cannot be said that most in-laws share a common household. It would also be required of a court to elaborate on the extent to which affinity applies: in other words, does it refer only to one's parent in-laws and/or sibling in-laws, or other relations in the collateral line as well?

Adoption is the legal relationship that arises between an adoptive parent and an adopted child. In terms of section 242(2)(*c*) and (3) of the Children's Act 38 of 2005 an adoptive parent becomes the parent of the child for all intents and purposes. Thus, an adoptive parent cannot marry an adopted child. Based on the court's interpretation, Act 116 of 1998 should extend to this relationship only while the parties live together. Thus, the protection afforded in terms of Act 116 of 1998 should then come to an end upon the adopted child moving out of the common home. A court interpreting the provision otherwise would amount to differentiation between relations arising through blood, affinity and adoption, which would then require a satisfactory justification. This judgment therefore, was the perfect opportunity for the court to give context to address the obvious anomalies created by the judgment.

To add to the court's statement that the other aspects of the definition require "some form of association", reference is made to the actual provision. Section 1 of Act 116 of 1998 reads:

> "'domestic relationship' means a relationship between a complainant and a respondent in any of the following ways:
>
> (a) they are or were married to each other, including marriage according to any law, custom or religion;

(b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
(c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
(d) they are family members related by consanguinity, affinity or adoption;
(e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
(f) they share or recently shared the same residence."

As far as category (a) is concerned, reference is made to those persons who are or were married. With regard to those who are no longer married, would they be excluded if they no longer share a home? Could it similarly be argued that having been married does not suffice for purposes of Act 116 of 1998? Or do ex-spouses find themselves in a more favourable position than siblings who no longer live together? There is no longer a relationship, other than possibly being co-parents, that is if they share children.

Category (e) is even more interesting in that it refers to an engagement, dating or customary relationship including an actual or perceived romantic, intimate or sexual relationship of any duration. Any duration implies that there is no set time that the parties needed to date in order to be protected in terms of the act. Furthermore, this part of the provision does not require that the parties should have shared a home in order to rely on Act 116 of 1998. Again, this illustrates the need for the court to elaborate on the qualification "some form of association" that is required in respect of the remaining categories. Furthermore, the other provisions specifically mention live or *lived* together, which again shows that sharing a common household is not required. It can be assumed that many siblings lived together; thus, it is not understood why the court limited the application of Act 116 of 1998 in the context of siblings. While there may be strong arguments that there is a need to limit the provision, for example, by excluding distant cousins, the court nevertheless failed to acknowledge that its interpretation of the provision excludes many applicants. Also, if one has regard to the court's statement that a "domestic relationship" entails sharing a common household, that would mean that all categories or persons who *lived* together should also be excluded from the protection of Act 116 of 1998.

Le Roux-Kemp highlights that there are arguments that a broader definition is required in that the notion of family goes beyond marriage and that cohabitation should not be a prerequisite (7 and see South African Law Commission *Research Paper on Domestic Violence* (1999)). It is evident that the extent of the applicability of the proposed act was previously questioned by the South African Law Commission ("Family Violence" Issue Paper 2, Project 100 (1996) 5):

> "The further question arises whether the Act should not be amended to include family members that fall beyond the immediate family scope, for example an aunt, uncle, niece or nephew. There seems to be the argument that such an amendment would negate the spirit of the Act which is to prevent violence between parties living together as a family" (see also *Research Paper* 41).

The recommendation provided:

> "[T]here should be comprehensive inclusion of all those exposed to the risk of domestic violence …. It is conceded that a broad definition of the class of persons eligible to seek protection could be criticised for including relationships that fall outside the 'domestic' realm. However, since the aim is to provide protection from violence, a definition which is criticised for being too broad is preferable to a definition that is criticised for being too narrow. If a person who arguably falls outside the

> domestic realm is protected by invoking the provisions of domestic violence legislation, it would be a small price to pay, if any, for the assurance that victims who ought to qualify for the intended protection are entitled to apply for relief" (*Research Paper* 56).

Based on the above, it may be necessary for the court to reconsider its judgment in this regard. The court also failed to take cognisance of the objectives and foundational principles of Act 116 of 1998, one of the former being the acknowledgment that domestic violence can occur in a wide range of domestic relationships (Le Roux-Kemp 4).

4.3 The position in New Zealand

In the research paper by the South African Law Commission, reference was made to several jurisdictions in respect of the categories of relationships to which protection is afforded. One such jurisdiction is New Zealand. In respect of family members New Zealand does not appear to require the existence of a common household. *Chauhan v Grewal* (2017 NZFC 8738) involved a dispute between a brother and sister as a consequence of the issues between their children. The court held that the siblings were "family members" in terms of the domestic violence act, and thus, in a domestic relationship (par 3). No reference was made to the parties sharing a household or being required to share a household in order to qualify.

The relevant provisions contained in the New Zealand act can go a long way to assist in defining the extent of the applicability of Act 116 of 1998, which is broader than the current definition provided in the latter act. If this is not the approach to be followed, Act 116 of 1998 should still be amended to give effect to the alleged conundrum created by the judgment. It is also to be noted that the Domestic Violence Act 86 of 1995 of New Zealand, which was referred to in the *Research Paper*, has since been amended. Reference will therefore be made to the Family Violence Act 2018, which came into effect on 1 July 2019 (nzfvc.org.nz (15-09-2019)). While this may be so, cases decided prior to the Family Violence Act will be discussed, since these cases provide insight into the meaning of some of the terms used in both New Zealand acts.

In terms of section 12 of the New Zealand act the meaning of "family relationship: general" is provided: "For the purposes of this Act, a person (*A*) is in a *family relationship* with another person (*B*) if A – (a) is a spouse or partner of B; or (b) is a family member of B; or (c) ordinarily shares a household with B (*see also* s 13); or (d) has a close personal relationship with B (*see also* s 14)."

Section 13 goes further by providing the meaning of "family relationship: sharing household":

> "For the purposes of section 12(c), a person (*A*) is not regarded as sharing a household with another person (*B*) by reason only of the fact that — (a) A has, with B,— (i) a landlord-tenant relationship; or (ii) an employer-employee relationship; or (iii) an employee-employee relationship; and (b) A and B occupy a common dwellinghouse (whether or not other people also occupy that dwellinghouse)."

The act also provides for the meaning of "family relationship: close personal relationship" in section 14 as well as factors to guide a court in determining whether the relationship can be regarded as a close personal relationship:

> " (1) A person (*A*) is not regarded as having a close personal relationship with another person (*B*) under section 12(d) by reason only of the fact that A has, with B,—
>
> (a) an employer-employee relationship; or
>
> (b) an employee-employee relationship.

(2) A person (*A*) is not prevented from having a close personal relationship with another person (*B*) under section 12(d) by reason only of the fact that A has, with B, a recipient of care-carer relationship.
(3) In determining whether a person (*A*) has a close personal relationship with another person (*B*) under section 12(d), the court must have regard to—
(a) the nature and intensity of the relationship, and in particular—
(i) the amount of time A and B spend together:
(ii) the place or places where that time is ordinarily spent:
(iii) the manner in which that time is ordinarily spent:
(b) the duration of the relationship.
(4) Despite subsection (3)(a), it is not necessary for a person (*A*) to have a sexual relationship with another person (*B*) in order for A to have a close personal relationship with B.
(5) Subsections (2), (3), and (4) do not limit the matters to which a court may have regard in determining, under section 12(d), whether a person has a close personal relationship with another person".

Based on the decision by the supreme court of appeal, the provision may be too broad, as it extends to "family members", whereas the court alludes to the fact that Act 116 of 1998 can certainly not extend to, for example, distant cousins. While it is submitted that Act 116 of 1998 should extend to all family members, if this is not accepted, then the current provision should be amended accordingly. In line with the court's judgment, the amendment could read: "'domestic relationship' means a relationship between a complainant and a respondent in any of the following ways: … (d) they are family members related by consanguinity, affinity or adoption who share a common household." This definition would, it is submitted, defeat the entire purpose of Act 116 of 1998, which was enacted, as mentioned earlier, to among other things, extend the applicability of the act.

The New Zealand Act provisions furthermore not only state what a domestic relationship is, but also provide when the parties are not regarded as sharing a common household as well as factors to consider to assess the closeness of the relationship. To assist in the applicability of the act, regard may be had to the provisions relating to what constitutes a "close personal relationship". It should, however, be highlighted that case law illustrates that there is debate regarding the meaning of a "close personal relationship", and, thus, not every relationship will fall within this category, which then gives effect to the supreme court of appeal's statement that the act cannot extend to all types of relationships. In *RCT v HB FAM* (2008 NZFC 51), the court delved into the question of whether or not the relationship between R and H constituted a "domestic relationship" for purposes of the 1995 act. The relevant parties had known each other for a number of years, and, thus, it was argued on behalf of R that a domestic relationship existed between them. The court quoted extensively from *Dudley v Brooks* (1998 17 FRNZ), where the latter court adopted the analysis in *Wyatt v Eldershaw* (FC, New Plymouth, FP043/222/97, 24 July 1997) regarding a "close personal relationship" (par 15):

"A 'close personal relationship' is the only criterion of 'domestic relationship' which contains no express requirement of domesticity in the sense of relationship as 'partners' (s 4(1)(*a*), family membership (subpara (b)), or ordinarily sharing a household (subpara (c)). There has been some difference of judicial opinion as the Family Court has struggled to relate particular fact situations to what could be supposed to have been the legislative intention in using the expression. What has been classed as a conservative view is that an element of domesticity is ordinarily required (see *D v B* 1996 NZFLR 812; *Willeman v Maney* 1997 NZFLR 280). Another view adopts a broader concept which depends basically on whether a situation exists between the applicant and the respondent in which protection is appropriate having regard to the social objectives of the Act (see *T v H* 1996 NZFLR 865, *Schlichting v Punnet* 1997 NZFLR 181, also reported as *S v P* (1996) 15 FRNZ 225, *S v M* 1997

NZFLR 210). With respect, as I pointed out in the sequel to *T v H* (*T v H* (No 2) 16/10/1996, Judge Inglis QC, FC New Plymouth FP043/302/96) such a test may be criticised as being imprecise, but I held in effect that the actions of the respondent in that case, an obsessive stalker who persistently attempted to force a close personal relationship on an applicant who did not want it, had by his own behaviour created a 'close personal relationship' with her so as to support a final protection order. I carried the issue somewhat further than any of the previous cases in *M V P* 1997 15 FRNZ 539; 1997 NZFLR 597 where I held that a close personal relationship was capable of being created by the respondent's persistent harassing and threatening conduct towards the applicant apparently as part of a neighbourhood feud.

There remain a difficulty in interpreting 'close personal relationship' in a way that reconciles the statutory context of that expression (including the various criteria of 'closeness' referred to in s 4(2) to (4) with the object of providing protection for an applicant faced by a respondent's unacceptable behaviour. It seems, however, that whether or not there is a 'close personal relationship' must be a question of fact and degree and requires an objective assessment of the relationship, extending to the actions of the respondent and the consequences and implications of those actions which may themselves create a close personal relationship because of the impact they are intended to have on the applicant. In *Schlichting v Punnet* 1997 NZFLR 181, 187, also reported as *S v P* (1996) 15 FRNZ 225, 231 Judge Adams speaks of the term 'domestic relationship' as a term: 'used by the Act to describe a sufficient and appropriate nexus between parties in a context which may call for protection from violence.' With respect, I would not question that precise encapsulation."

The evidence in *casu* was limited as to the nature, quality and extent of the relationship. While the parties knew each other for a significant period of time, there was no evidence of them having regular or significant contact or more than a casual friendship (par 19). Furthermore, the evidence did not indicate that they were best friends (par 20); instead, it was indicated that they were past friends (par 22). According to the court, the expression "close personal relationship" requires more, and while the categories are open-ended, the relationship between the men, both past and present did not constitute a close personal relationship (par 23).

These provisions as well as the decision discussed above could, it is submitted, assist the court in establishing whether the relationship in question is close enough to constitute a domestic relationship if no common household is shared.

5 *Conclusion*

While it may be argued that the purpose of Act 116 of 1998 is to focus on the "domestic" element, it is nevertheless argued that a common household should not be the basis to rely on Act 116 of 1998. The court's judgment does indeed limit the applicability of the act and requires clarification on the part of the supreme court of appeal. The court assumed that violence happens only in the confines of a home, when many victims do not share a home but are in fact victims of domestic violence. It may further be argued that the court's judgment relates only to siblings, but this cannot be so, as it would amount to differentiation between certain classes of persons. While it may be necessary to limit the scope of who may make use of Act 116 of 1998, it is evident, at least in the law reform commission's opinion, that not doing so would be a price they were willing to pay to have a broader definition than one that is too limiting (*Research Paper* 56). In this regard, the provisions of the New Zealand Act would be of great assistance in providing guidelines on the possible amendment of the current provision. If this is not the route to be followed, Act 116 of 1998 should still be amended to give effect to the supreme court of appeal's decision and to clarify the position regarding the relationships of affinity and adoption. However, before embarking on this route, it may be necessary

to research the issue of sibling violence, which, as mentioned earlier, is one of the least studied areas. The amendment would also require the amendment of the other categories where no reference to a common household is made.

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DIE ONSKENDBAARHEID VAN DIE BELANG VAN PRIVAATEIENDOMSREG

"Das Eigentum wird von den Menschen ausgeübt nicht um der Sache willen, an welcher es zusteht, sondern um des menschlichen Bedürfnisses willen, welches durch die Sache befriedigt wird. Das recht an der Sache wird verletzt, nicht bloß wenn die Integrität der Sache beschädigt wird, sodaß sie aus diesem Grunde nicht mehr dem Bedürfnis, für welches sie bestimmt ist, so dienen kann wie im unverletzten Zustände; sondern auch dann, wenn die Benutzbarkeit der Sache für Menschen aus einem Grunde verhindert oder erschwert wird, welcher sich gegen die Menschen selbst richtet, deren Bedürfnis durch die an dieser Stelle befindliche Sache befriedigt werden soll" RG, 1. Zs 19-03-1882, RGZ 1882, 61 217 219

(Die uitoefening van die inhoudsbevoegdhede van eiendomsreg deur die reghebbende geskied nie ter wille van die sake as objekte van dié saaklike regte nie, maar ter wille van die reghebbendes wat daarmee hul tersake behoeftes met hul eiendom bevredig in ooreenstemming met die grondbeginsel van 'n vreedsame ordening van die gemeenskap deur afweging van regtens beskermingswaardige belange. Die reg van die reghebbende op sy saak word geskend nie bloot wanneer die objek fisies beskadig of aangetas word en die saak daarna nie meer optimaal aan die doel daarvan vir die reghebbende kan voldoen nie, maar ook dan wanneer die reghebbende in die uitoefening van sy inhoudsbevoegdhede belemmer word deur niereghebbendes en die belemmering gerig is teen die reghebbende en nie teen sy saak as objek van sy saaklike reg nie.)

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