

**THE INDIGENOUS RIGHTS OF PERSONALITY WITH
PARTICULAR REFERENCE TO THE SWAZI IN THE
KINGDOM OF SWAZILAND**

by

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Submitted in accordance with the requirements for the degree of

DOCTOR OF LAWS

at the

UNIVERSITY OF SOUTH AFRICA

PROMOTER: PROFESSOR FP VAN R WHELPTON

NOVEMBER 2004

ACKNOWLEDGEMENTS

I wish to express my sincere gratitude to Professor FP van R Whelpton, my promoter, for his encouragement and patience. His invaluable counsel enabled me to talk and think through the many complex issues raised in this study.

My thanks and appreciation are also due to the following people:

Iauma Cooper for her meticulous editing, which transformed my rough draft into a professional presentation.

Karen Breckon for her painstaking assistance in the compilation of the bibliography.

Richard Dlamini and the panel of experts in Swaziland for their co-operation and willingness to share with me the wealth of their accumulated knowledge.

Family and friends (and in particular Ronnie Condell) for their active interest and support during the past years of my study.

However, my greatest debt of all is owed to my loving wife Shirley, who has had to put up with my intense preoccupation with this study: only from first-hand experience can one possibly appreciate what is involved living with someone who is compiling a thesis. Without her whole-hearted support and encouragement, none of this would have been possible. In addition, her many, many hours of patient and uncomplaining typing can only be regarded as a labour of love.

Finally, in true indigenous fashion, I wish to dedicate this thesis to my ancestors, and, in particular, to my late Mum and Dad, who always wished to have a doctor in the family.

SUMMARY

This study was undertaken to establish whether rights of personality are known in indigenous law. Since indigenous law differs not only between tribes but is also affected by the degree of exposure to Western values, a micro-study has been done in a semi-rural environment in the Kingdom of Swaziland to establish to what extent own value systems have been influenced or altered when Western legal concepts are utilised. The information, obtained by interviewing a panel of experts, was compared with the available literature. During the process of gathering information, the aims of the research were not only to describe how the legal principles function, but also to take note of those socio-cultural processes which function outside of the law.

Rights of personality were studied against a background of the culture and way of life of the peoples concerned. The importance of culture has been acknowledged in the Constitution of the Republic of South Africa, wherein the recognition and application of indigenous law generally rests on a constitutionally protected right to culture.

Whilst the identifiable rights of personality may generally be classified according to specialised legal systems, the separation of rights to good name and to dignity may be inappropriate in the indigenous sphere. Dignity in indigenous legal systems is to be viewed as a comprehensive right of personality, into which should be subsumed the right to good name and reputation in the community. It is such dignity, embracing the *ubuntu* quality of humanness that is protected as a comprehensive indigenous right of personality.

Although the indigenous law of personality is showing some signs of adapting to new developments, there is also proof that the established legal principles and human values are being retained. However, these changes are unique and are neither typically traditional nor Western. The indigenous law of personality, operating in a changing social environment, has to retain its flexibility and adaptability in order to remain “living” law for the peoples concerned.

Key terms:

Indigenous law and culture; holistic focus; living law; unspecialised legal systems; delict and crime; identifiable rights of personality; body and bodily freedom; good name; dignity; feelings; privacy; infringement of rights; reconciliation; individual; communal harmony; the Swazi; Swazi law and custom; ancestors; humanness; *ubuntu*.