



RHODES UNIVERSITY
Where leaders learn

Faculty of Law
Law of Delict 2017

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INTRODUCTION

Purpose of the Law of Delict

This course aims to provide students with a working knowledge of the general principles of the Law of Delict and the application of these from normative and factual perspectives.

During the first semester you will examine four of the five elements required to establish delictual liability (conduct, wrongfulness, fault and causation). The fifth element-harm is covered in the second semester along with specific forms of damage protected by the *Actio Legis Aquiliae*, the *Actio Iniuriarum* and Germanic action. The course will also consider the development and evolution of this area of law in South Africa's constitutional dispensation.

Assumptions of Prior Learning

The lecturer in this course assumes that you are able to:

- Recognise, identify and solve legal problems
- Communicate effectively in English (written and spoken)
- Conduct in-depth research and comply with conventions of ethical referencing
- Take charge of your own studies and organise your time accordingly

COURSE OBJECTIVES/ LEARNING OUTCOMES

By the end of the course you are expected to:

- Know and understand the main principles governing delictual liability and the rules derived from case law, legislation and/or the common law
- Recognise problems governed by the principles of delict and where they fit in the scheme of this area of law
- Relate the various dimensions of factual problems to applicable rules and principles
- Demonstrate an awareness and understanding of the development of this area of law as well as the effect of the Constitution in this regard
- Be able to communicate cogent, systematic solutions to delictual problems
- Organise and manage your time and resources effectively
- Demonstrate the ability to conduct e-research and the utilization of e-learning legal resources and platforms.

The specific outcomes for each section/topic of the work are outlined in the reading list.

TEACHING METHODS

The two principal modes of teaching and learning in this course are lectures and self-study.

Lectures: Lectures are participatory in nature and you may be called upon to comment on the prescribed readings. Students are therefore expected to prepare adequately for lectures and tutorials. Where necessary the lecturer will supplement course materials with illustrations and explanatory summaries.

Self-Study: Certain portions of the course as well as sections not covered during lectures are designated self-study sections. This means *you* are responsible for reading and understanding the material in these sections because these may be assessed in the form of an assignment, test or in the final examination. It is therefore *your* prerogative to approach the lecturer for clarity if your experience difficulty with concepts in the self-study sections.

RESOURCES FOR THE COURSE

Prescribed Text:

Loubser (Ed), Midgley (Ed), Mukheiber, Niesing, Perumal *The Law of Delict in South Africa* 2ed (2012)

NB: Students are advised to read the prescribed textbook together with J. Neethling & J.M. Potgieter *Neethling, Potgieter and Visser, Law of Delict 7th ed* (2015)

The lecturer will draw on both books as well as other relevant texts when addressing the course content.

Recommended:

J. Neethling & J.M. Potgieter *Neethling, Potgieter and Visser, Law of Delict 7th ed* (2015)
(highly recommended)

J Neethling, J.M Potgieter & T.J Scott-Case *Book on the Law of Delict 5th edition*

Klopper HB *The Law of Third Party Compensation 3rd edition* (2012)

Van der Walt and Midgley *Principles of Delict 3rd edition* (2005)

ASSESSMENTS

You will be afforded multiple and continuous opportunities for assessment during the course of the year in line with the principles of outcome based education. Your competence will be ascertained in the form of 6 formative assessment tasks and a final examination constituting the summative assessment. The dates below were scheduled in consultation with all the final-

year LLB lecturers and have been approached with a degree of consideration to ensure your academic success. The manner in which the assessments will be conducted will be as transparent, clear and explicit as possible. Moreover, you will be provided with meaningful feedback on all tasks.

1. Case Note & Commentary-Submission Date: 24 March 2017 (5%)

For this assessment you will be required to analyse a court judgment. A case analysis is an extended commentary on a case. Therefore, for this assignment you are expected to demonstrate your ability to extract relevant information and provide succinct legal commentary. To do well in this assignment you will have to provide context of your discussion by giving a brief description of the facts and legal background of the case, In addition, you have to demonstrate your ability to identify and outline the main legal issues, critically examine the rationale and most importantly, reflect on the legal, social and political implications of the decision. Further details pertaining to the assignment will be explained in class.

2. Online Quiz & Take-Home Problem Solving Exercise Due: 02 May 2017 (5%)

One of the graduate attributes expected of a law student is the ability to provide innovative and effective solutions to legal problems. In addition to this, time management, creative thinking and prioritizing work while under pressure are invaluable skills that all law graduates should possess. This task is geared at ensuring your competence in this regard. Furthermore, the purpose of the online quiz component of the exercise is to integrate of the use of information technology in your learning process. In addition to demonstrating your ability to solve delictual problems in a short space of time you will therefore also be expected to demonstrate your familiarity with and the ability to use e-learning and research platforms such as LexisNexis-Butterworths, Jutastat, Sabinet Legal and other e-resources. More details pertaining to the exercise will be communicated in class.

3. Closed-Book Test 1 Date: 24 May 2017 (10%)

You will be tested on all the work covered in the first semester. The questions in this test may take the form of theory and/or problem-type. In this test you will be expected to demonstrate your ability to solve legal problems using legal reasoning. You will be graded on your ability

to relate the various dimensions of factual problems to applicable rules and principles. Furthermore, you have to show your ability to provide cogent, systematic solutions to delictual problems stemming from the areas covered thus far.

The grading process for this particular test will take place in three stages.

Self-Assessment: You will first assess your own work and grade yourself against a benchmark and criteria that will be given to you in class. This will enable you to view your mistakes and understand how and where you should improve.

Blind Peer-Assessment: The test scripts will be randomly distributed in class to give you an opportunity to assess each other. This will not only enable you to see the mistakes made by your peers but you will also have an opportunity to see and learn alternative strategies of approaching problem type questions and test questions in general. This exercise goes a long way in improving your understanding of the course and will also help you identify your strengths and weaknesses

Moderation: To ensure fairness and accuracy in the marking I will moderate the scripts and give you formal feedback. I will also check to ensure that the marking is consistent with the criteria given.

4. Research essay/short journal article-Submission Date: 18 August 2017 (10%)

Legal research and writing skills are an important commodity in the workplace. It is therefore important to develop and hone these skills while still in law school. Writing legal scholarly articles and research papers are a great way to develop these skills. The purpose of this task is to assess your competence in focused legal research and writing. It will also encourage you to improve your analytical and written skills. The topic(s) will be communicated in class and so will additional details pertaining to the assignment.

5. Take Home Exercise: (legal opinion & advice) due: 11 September 2017 (5%)

At some stage in their careers all legal practitioners (and non-practitioners) have to write some form of legal opinion and /or give some sort of legal advice. In brief, a legal opinion is an analysis followed by an expression of legal conclusions on a legal matter/problem. The main aim of it is to identify legal risks and effects and how the law applies in the particular problematic circumstance. Legal advice is taking this a step further. It provides counsel and

guidance to a client by explaining to the steps that should be taken to solve the problem. Or the action that needs to be undertaken in relation to the applicable law in circumstance. The purpose of this exercise therefore is to ascertain your competence in both particularly when it comes to delictual problems.

6. Closed-Book Test 2 Date: 27 September 2017 (15%)

You will be tested on all the work covered thus far. The questions in this test may take the form of theory and/or problem-type. In this test you will be expected to demonstrate your ability to solve legal problems using legal reasoning. You will be graded on your ability to relate the various dimensions of factual problems to applicable rules and principles.

Furthermore, you have to show your ability to provide cogent, systematic solutions to delictual problems stemming from the areas covered thus far.

7. Closed Book Examination Oct/Nov (50%) (Summative Assessment)

The final assessment in the course will be in the form of an examination to be written during the October/November examinations cycle. The exam will be for a total of 50 marks thus counting 50 % towards your final mark. The duration of the paper will be 3 hours. Similarly to the tests, questions in the exam may take the form of theory and/or problem-type question. At this stage you will be expected to have a firm grasp of all the legal principles covered during the year. No section work is written off. Ideally, the exam would cover everything however; an emphasis will be on sections covered in semester 2.

COURSE CONTENT (Course Structure)

TOPIC 1

Introduction to the Law of Delict

These lectures aim to provide you with an introduction to the Law of Delict. Delict will be defined and explained and then further distinguished from other forms of liability and civil obligations. The nature and differences between the *Actio Iniuriarum* and the *Actio Legis Aquiliae* will be explained and these will be distinguished from the action for pain and suffering.

TOPIC 2

Conduct and onus of proof

The purpose of these lectures is to discuss *Conduct* as a requirement for delictual liability. We will also address *onus of proof* in the Law of Delict as well as the shift in onus which occurs when dealing with the Defence of Automatism.

TOPIC 3

Wrongfulness

These lectures will introduce you to the concept of wrongfulness as well as the need for and the purpose of wrongfulness in the Law of Delict. The various approaches to wrongfulness including the doctrine of subjective rights, breach of a legal duty and the concept of a 'duty to care' will also be introduced during this lecture. We will also be looking at the breach of a legal duty which is one of the tests used to determine wrongfulness of omissions. Our last consideration will be the traditional crystallised categories of wrongfulness as they have developed through case law.

TOPIC 4

Fault

In this section you will be introduced to the concept fault and its definitions. Intention as a form of faulty will be examined as well as the capacity and accountability of minors. Fault will also be distinguished from wrongfulness. In these lectures you will be introduced to the general test for negligence as well as the standard of the reasonable person. Furthermore, these lectures will be used to explain what is meant by contributory negligence, foreseeability and preventability as well as circumstances that require a higher standard of care, as demanded by law. The final lectures will be dedicated to a discussion vicarious liability and liability without fault in general.

TOPIC 5

Causation

The main function of causation is to question whether there exists a causal nexis between wrongful conduct and the harm suffered. In this section we are therefore going to explore the

various theories of causation that have developed over time pertaining to both factual and legal causation.

TOPIC 7

Harm and the Law of Damages

The purpose of these lectures will introduce you to the concept of damage. The distinction between patrimonial loss and non-patrimonial loss will be examined, as well as policy limitations to the scope of damages which are recoverable. We will consider the 'once and for all rule'; mitigation of loss rule; prospective loss and collateral benefits. The lectures will also be used to consider the problem of the 'unconscious plaintiff' in the law of delict.

Under this topic you will also be introduced to the concept of pure economic loss. We will examine the rules and principles which apply when pure economic loss arises from a negligent misstatement or from interference with a contractual relationship and most importantly, we will also consider the circumstances where contracting party could have recourse to a delict where he/she suffers pure economic loss as a result of a breach of a contract. In our last lecture we will reflect on the development of product liability and the impact of the Consumer Protection Act 68 of 2008 in this regard.

TOPIC 7

The Actio Iniuriarum

In these lectures you will be introduced to the *actio iniuriarum*-an action which protects against the intentional infringement of certain personality rights. Deprivation of freedom, the rights relating to physical integrity, privacy, dignity and good name will be considered at length. Defamation will also be introduced to students and the issue of *locus standi* in defamation actions will be examined. In our last lectures we will reflect on the basic principles of freedom of expression, particularly in relation to hate speech in online communication and social media.