



RHODES UNIVERSITY
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LAW OF DELICT A 2009

COURSE OUTLINE

LECTURER: ADV LIEZEL NIESING

1 INTRODUCTION

OVERVIEW

The Law of Delict is taught in the final year of study. It consist of two semester courses namely **Law of Delict A** and **Law of Delict B**. Together they are designed to provide students with a detailed understanding of the field to develop and enhance the skills that are necessary for legal practice.

As with most law courses, the focus in both Law of Delict A and Law of Delict B is on content. However, the Law of Delict does not consist of a static set of rules. It is a dynamic subject which continues to develop. Therefore, the course emphasises the understanding of broad principles and how they are applied in practice. Primary objectives are to develop research, problem-solving, critical-thinking and reasoning skills. The course is heavily reliant upon case law due to the dynamic nature of the Law of Delict.

CREDIT VALUE

10 Credits (One Semester Credit)

ASSUMPTIONS OF PRIOR LEARNING

- General ability to identify and solve problems
- Ability to organise and manage own studies
- Ability to collect, analyse and evaluate information

- Good communications skills

2 OUTCOMES

2.1 CRITICAL OUTCOMES

- Identify and solve problems
- Work in a team
- Organise and manage time and studies
- Collect, analyse and evaluate information
- Communicate effectively
- Recognise problem-solving contexts
- Think and argue critically

2.2 SPECIFIC OUTCOMES

- The ability to find appropriate legal principles and authority for propositions, and, in particular, to extract delictual principles from case law
- The ability to identify material issues from factual scenarios, to recognise the relevant legal principles which govern a specific situation and to determine the likely result should the situation be referred to a court
- The ability to advise and communicate legal issues in writing
- The ability to organise and manage a voluminous workload (particularly due to heavy reliance on case law)
- Recognising the value and constraints of team work
- The ability to use public policy and the Constitution to resolve problems in a creative way
- The confidence to rely primarily on reasoning ability instead of precedent when seeking solutions to a problem

3 TEACHING METHODS

Students will be expected to assume responsibility of their own learning. The extent of their knowledge at the end of the course will depend on the effort they put into the course. Students will be provided with a study guide which contains general principles and extracts from some of the most important cases. The lectures will follow the structure of the study guide. Students will thus be expected to prepare the topics in advance: advance preparation is critical for facilitating quality contact sessions.

Lectures will be semi-Socratic in style and class participation is emphasised. After a brief explanation of the principles of the topic at hand a class discussion will follow on the relevant case law as listed in the study guide. Where time permits, the principles and case law discussed will be applied to the factual scenarios at the end of each lecture outline in the study guide.

Students will notice that some cases as listed in the study guide are relevant to more than one topic. The repetition is deliberate in order to illustrate how the different elements in the law of delict are consolidated in practice. Students will find that once one is familiar with the nature of judicial reasoning in delict cases, it becomes easier to identify and address issues in a problem-solving context. However, the familiarity can only be obtained by *reading the cases*. Therefore, students are *not* required to learn each and every case in the study guide. The cases have been selected to illustrate how courts, over time, deal with delictual problems and how they address the principles. Since each person has his/her own way of assimilating knowledge, I encourage students to recognise the reading of case law in this course as a matter of *prioritising*: knowledge of the leading cases (which will be discussed in detail during lectures) and those which students find useful in developing their argument will suffice for purposes of tests and the examination.

Students should not feel constrained to follow the views which the lecturer expresses in lectures, or even to follow the views expressed in certain judgments. In the law of delict there are often no right or wrong answers and there are no single approach to any problem. Students are encouraged to think critically about the law and they are free to experiment with their own arguments on the topics at hand.

Students will be given a group assignment which aims (a) to improve their problem-solving skills; (b) to provide opportunities to practice the type of tasks which they will be required to perform in the examination at the end of the course; and (c) to recognise the requirements of group work and to assess how they operate as a member of a team. The nature of the assignment, as well as the hand-in date, will be communicated to the students during the introductory lectures.

Towards the end of the course, a compulsory test will be scheduled which will be in a similar format as the examination.

4 RESOURCES

- Neethling, Potgieter and Visser *Law of Delict* 5ed (2006)
- Van der Walt and Midgley *Principles of Delict* 3ed (2005)
- Law Reports and/or Journal articles available in the Law Library and per electronic databases.

5 ASSESSMENT

Refer to the annexure at the end of the document.

A class-attendance register will be taken during every lecture for purposes of DP requirements.

Students carry the responsibility to keep record of the lectures they miss.

The assignment and test will be used to assess students' progress during the course and the average mark will form the class-component (30%) of the final mark. The topics and hand-in date for the assignment will be identified during the introductory lectures. The test questions will be similar to the examination questions in order to prepare students for what is expected of them for the final examination.

A written examination will take place in June and the outcome of that examination will contribute 70% to the final mark for Law of Delict A. The questions in the examination will mainly require students to apply the law of delict to factual scenarios (the so-called problem-type questions). In answering these questions, students are required to give a systematic and comprehensive explanation of the theoretical principles applicable to the scenarios, use case law to explain and illustrate their theoretical understanding of the relevant issues, apply the principles and relevant case law to the scenario at hand and write a conclusion in the form of advice to prospective clients on the possibilities of success in the particular scenario. Therefore, students are required to plan their answers carefully in order to write a systematic argument that reflects an *application of the relevant legal principles and case law*. Students are required to cite case law correctly, i.e. to cite *both* parties (eg Minister of Safety and Security v Hamilton; Cape Metropolitan Council v Graham; Clarke v Hurst).

6 EVALUATION

Students are required to complete evaluation questionnaires according to the Law Faculty's evaluation cycle. Students are encouraged to voice their comments in terms of the structure, outcomes and general impression of the course. Students are furthermore encouraged to comment on how they experienced lectures.

An external examiner assesses the quality of the examination paper, as well as the student answers to the examination questions. The external examiner must complete a report on the course as required by University policy.

7 COURSE CONTENT

SECTION A – INTRODUCTION

- Lecture 1: The Law of Delict – Place in the Legal System
- Lecture 2: The Nature of Delictual Liability
- Lecture 3: Constitutional Values and the Effect of Constitutional Provisions in the Law of Delict

SECTION B – THE ELEMENTS OF A DELICT AND THE UNDERLYING CONCEPTS

- Lecture 4: Harm and the Three Actions in the Law of Delict
- Lecture 5: Conduct
- Lecture 6: Wrongfulness – The Concept of Wrongfulness and the Legal Convictions of Society
- Lecture 7: Wrongfulness – Infringement of Rights and Breach of a Legal Duty
- Lecture 8: Wrongfulness - Defences
- Lecture 9: Fault – Accountability; Intention
- Lecture 10: Defences excluding intention
- Lecture 11: Fault - Negligence
- Lecture 12: Causation
- Lecture 13: Causation (continued)
- Lecture 14: Damages (lecture 4 referred)
- Lecture 15: Damages (continued)

SECTION C – SPECIFIC FORMS OF INIURIA

- Lecture 16: Introduction: The right to *corpus, dignitas, fama*
- Lecture 17: Infringement of Bodily Integrity (*corpus*)
- Lecture 18: Infringement of Dignity (*dignitas*)
- Lecture 19: Impairment of Reputation (*fama*)
- Lecture 20: Impairment of Reputation (continued)
- Lecture 21: Revision
- Lecture 22: Revision

THE LAW OF DELICT B: (provisional outline)

SECTION D – SPECIFIC FORMS OF DAMNUM INIURIA DATUM

- Lecture 23: Injury or Death of another Person (Action of non-dependants; Action of Dependants)
- Lecture 24: Action of Dependants (continued)
- Lecture 25: Psychological Lesions
- Lecture 26: Pure Economic Loss
- Lecture 27: Manufacturer's Liability
- Lecture 28: Unlawful Competition
- Lecture 29: Interference with a Contractual Relationship

Lecture 30: Negligent Misrepresentation

SECTION E – FORMS OF LIABILITY WITHOUT FAULT

Lecture 31: Justification for Liability without Fault and the General Characteristics of Liability without Fault

Lecture 32: Damage Caused by Animals (*actio de pauperie; actio de pastu; actio de feris*)

Lecture 33: Damage caused by fallen, poured, thrown objects; Damage caused by loss of a stolen thing; Damage caused by owners of neighbouring property; Certain forms of Iniuria

Lecture 34: Vicarious Liability

Lecture 35: Legislation imposing No-fault Liability

SECTION F – ORAL PRESENTATIONS ON THE LAW OF DELICT

For the remainder of the course, students are required to deliver oral presentations (15 minute presentation, 15 minute question-and-answer session) on topics as identified in the beginning of the course. Students can choose topics according to their own interests in the law of Delict, but topics must be of a contemporary nature – eg on issues that played out on the news (nationally or internationally). These presentations will replace the written assignment that is usually required. Therefore, the written test and the presentations will contribute equally to the 30% course-component of the final mark for Law of Delict B.

ANNEXURE

SPECIFIC OUTCOMES	ASSESSMENT CRITERIA	ASSESSMENT TASKS
The ability to find relevant and appropriate legal principles and authority for propositions and, in particular, to extract delictual principles from cases.	Students must demonstrate that they are able to refer to principles of law extracted from relevant cases and text books.	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to explain principles' ✓ A group assignment of 3000-5000 words. ✓ A test. ✓ A 2-hour examination in which questions are set to test students' knowledge of the law.
The ability to identify material issues from factual situations, to recognise the relevant legal principles which govern a specific situation and to determine the likely result should a situation be referred to a court.	Students must demonstrate that they can identify material issues from given sets of facts and then apply the principles of law to those facts and give advice on the likely outcome of the issue.	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to identify issues from factual scenarios given to them and to apply the relevant legal principles to the issues. ✓ A group assignment of 3000-5000 words. ✓ A test. ✓ A 2-hour examination in which questions are set to test students' knowledge of the law.
The ability to advise on and communicate legal issues in writing.	Students must demonstrate that they can identify material issues and relevant legal issues from facts, apply the law to the facts before	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to identify issues from factual scenarios given to them and to apply the

	them and give clear written advice on the likely outcome of the dispute raised by the facts in coherent language.	<p>relevant legal principles to the issues.</p> <ul style="list-style-type: none"> ✓ A group assignment of 3000-5000 words. ✓ A test. ✓ A 2-hour examination in which questions are set to test students' knowledge of the law.
The ability to organise and manage a voluminous workload.	Students must demonstrate that they are fully prepared for class discussions, the test and the examination and that they meet the deadlines set for them.	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to discuss and comment on preparation material. ✓ Deadlines for assignments must be met. ✓ A test. ✓ A 2-hour examination.
Recognising the value and constraints of team work.	<p>Students must:</p> <ul style="list-style-type: none"> ✓ submit a group assignment; ✓ provide evidence of their participation in the preparation of the assignment; ✓ Reflect on the value and constraints of group work. 	<ul style="list-style-type: none"> ✓ Group assignment. ✓ Minutes of group meetings in which the group records its activity. ✓ A document in which students assess the effectiveness of the group as a whole as well as the participation of individuals in the group.
The ability to use public policy and the Constitution to solve delict problems in a creative and critical manner.	<ul style="list-style-type: none"> ✓ Students must demonstrate that they can identify issues that raise policy concerns and require law reform. ✓ Students must demonstrate that they can use Constitutional principles to identify new ways in which problems might be solved in future. 	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to identify scenarios that raise Constitutional issues to determine possible avenues for reform. ✓ A group assignment of 3000-5000 words. ✓ A test. ✓ A 2-hour examination containing questions that require the application of Constitutional principles. These questions test the extent to which a student's reasoning is constrained by precedent and the extent to which viable alternative options are explored within the parameters set by the Constitution and public policy in general.
The confidence to rely primarily on reasoning ability rather than on precedent when seeking solutions to problems.	<ul style="list-style-type: none"> ✓ Students must demonstrate that they can identify material issues and relevant principles from the facts of the problem questions set in the test and examination and that they can apply the law 	<ul style="list-style-type: none"> ✓ Class discussions in which students are required to resolve issues according to delictual principles and to explore new ways of applying these principles.

	<p>to the facts before them.</p> <ul style="list-style-type: none"> ✓ Students must demonstrate that they can identify issues that raise policy concerns and require law reform. ✓ Students must demonstrate that they can use Constitutional principles to identify new ways in which problems might be resolved in future. 	<ul style="list-style-type: none"> ✓ A group assignment of 3000-5000 words. ✓ A 2-hour examination containing questions that test the extent to which a student's reasoning is constrained by precedent and the extent to which viable alternative options are explored.
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