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LAW OF DELICT A

2011

COURSE OUTLINE

LECTURER: ADV LIEZEL NIESING

1 INTRODUCTION

OVERVIEW

The Law of Delict is taught in the penultimate year of study in the LLB program. It consists 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 Law of Delict to develop and enhance the skills that are necessary for legal practice. In Law of Delict A, the focus is on the general principles of Delict, while in Law of Delict B various specific or special forms of delictual liability are addressed. Thus, Law of Delict B builds on Law of Delict A.

The focus in both Law of Delict A and Law of Delict B is on content and, in particular, case law. The Law of Delict does not consist of a static set of rules. It is a dynamic subject which continues to develop; hence the heavy reliance on case law. The course emphasises the understanding of delictual principles (which is broad in nature) and how they are applied in practice. Primary objectives are to develop research, problem-solving, critical-thinking and reasoning skills.

CREDIT VALUE

9 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
- Organise and manage time and studies
- Collect, analyse and evaluate information
- Communicate effectively
- Recognise problem-solving contexts
- Application of theoretical knowledge to practical scenarios
- 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 – particularly with regard to application of legal principles to practical scenarios.

3 TEACHING METHOD

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 this course outline, lists of prescribed material according to topics and exercise questions for each lecture and/or topic. The object of the exercise questions is to guide students through the prescribed material by focussing on the most important basic principles. 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.

Student participation during lectures is emphasised. Students should feel free to ask questions about the work during or after lectures. Questions asked during class will, unfortunately, be managed according to the time-constraints of a 45-minute lecture period. Where time permits, principles and case law discussed will be applied to mock-exam questions. These mock-exam questions will be made available to students on *RUconnected*. Towards the end of each term, test and examination exercise questions will be discussed with students in order to prepare them for the test and examination.

The lecturer makes extensive use of the university's electronic teaching aids. All course material (study guide and lecture slides) will be available to students on *RUconnected*. The

News Forum in the Delict A course on *RUconnected* will be used to communicate and confirm any information regarding the course, the test, the assignment and the examination. Once a message has been posted on the *News Forum*, students enrolled on *RUconnected* for Delict A will receive the news item per email at their RU e-mail address.

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. The cases have been carefully selected to illustrate how courts, over time, deal with delictual problems and how they address the principles.

Students should not feel constrained to follow the views which the lecturer expresses in lectures, or even to follow the views expressed in certain court judgments. In the law of delict there are often no right or wrong answers and there is 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, provided that they can substantiate their arguments with adequate sources of law.

4 RESOURCES

PRESCRIBED TEXTBOOK:

Loubser (Ed), Midgley (Ed), Mukheiber, Niesing, Perumal (2010) ***The Law of Delict in South Africa*** (Oxford University Press, Cape Town, RSA)

OTHER TEXTBOOKS:

Neethling, Potgieter and Visser *Law of Delict* 5ed (2006)

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

CASE LAW, LEGISLATION AND JOURNAL ARTICLES:

Refer to the Delict A 2011 Study Guide where a list of prescribed reading material is listed according to topic/lecture.

TAKE NOTE: Important new cases and journal articles which appear during the course of the semester may possibly be added to the prescribed reading list. Information regarding such new material will be communicated to students during lectures and on the *RUconnected* course site for Delict A.

5 LECTURE ATTENDANCE

There will be two lectures, of 45 minutes each, per week.

LECTURE VENUE	MOOT ROOM
LECTURE TIMES	TUESDAYS 12:20-13:05 THURSDAYS 10.30-11:15

Attendance of lectures is compulsory. The Law Faculty regards attendance at lectures as an inherent part of the course. Therefore, register will be taken during these contact sessions in order to gauge student involvement for purposes of DP requirements. **Students carry the responsibility to keep record of the lectures they miss.**

Refer to pages 44-47 of the Survival Guide for information on DP requirements and Leave of Absence (LOA).

6 ASSESSMENT

	Maximum
Class Work	30
Examination	70
Total	100

In order to pass this course, students must obtain a final performance mark of 50 out of 100.

CLASS WORK:

The **Class Work** component is made up of one **test** and one **assignment**. The test and assignment each count a total of 30 marks. The **average** of the test and assignment marks will constitute the Class Work component.

Information regarding the test and assignment will be communicated to students as soon as the general faculty schedule for LLB assessments has been published.

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.

EXAMINATION:

Students will write a 2-hour examination paper in June counting 70 marks. Students can expect problem-type questions and case discussion questions in the examination.

Penultimate year students, who fail Delict A in the June examination, may qualify to write a supplementary examination in January/February 2011. Supplementary examinations can only be taken subject to the Faculty Policy as set out on p47 of the *Survival Guide*.

The questions in the examination will mainly require students to apply the law of delict to practical or 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, whether written or verbal, in terms of the structure, outcomes and general impression of the course.

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: Definition, Nature, Functions and Essential Elements
- Lecture 2-3: Systematic approach to delictual problem-solving | General principles modified for specific actions
- Lecture 4: The impact of the Constitution on the Law of Delict

SECTION B1 –GENERAL PRINCIPLES: PRIMARILY FACT-BASED ISSUES

- Lecture 5: Harm
- Lecture 6: Conduct
- Lecture 7-8: Factual Causation

SECTION B2 – GENERAL PRINCIPLES: PRIMARILY NORMATIVE ISSUES

- Lecture 9-10: Legal Causation
- Lecture 11-12: Fault – Accountability | Intention
- Lecture 13: Fault –Defences directed at Intention | Negligence
- Lecture 14: Fault – Negligence (continued)
- Lecture 15-16: Wrongfulness
- Lecture 17-18: Wrongfulness – Defences

SECTION C - EXCLUSIONS

- Lecture 19: Exemption Clauses | Liability in Contract excluding action in Delict
- Lecture 20: Compensation for Occupational Injuries and Diseases Act 130 of 1993
- Lecture 21: Prescription

SECTION D – APPORTIONMENT OF FAULT AND REDUCTION OF DAMAGES

- Lecture 22 Remedies | Purpose of a damages award | The Once-and-for-All Rule | Collateral Sources | General Factors that influence a Delictual Damages Award
- Lecture 23: *Lex Aquilia*: assessment and quantification of damages
- Lecture 24: Germanic remedy: assessment and quantification of damages
- Lecture 25: Reduction and apportionment of damages
- Lecture 26: Reduction and apportionment of damages (continued)

THE LAW OF DELICT B: (provisional outline only)

SECTION A – SPECIFIC FORMS OF LIABILITY: PATRIMONIAL HARM & PAIN AND SUFFERING

- Lecture 1: Omissions | Negligent Misstatements
- Lecture 2: Pure Economic Harm | Interference with Contractual Relations
- Lecture 3: Unlawful Competition
- Lecture 4: Product Liability

- Lecture 5: Breach of Statutory Duty | Public Authorities
- Lecture 6: Professional Liability
- Lecture 7: Injury or Death of another Person
- Lecture 8: Introduction to Collision Law and Third Party Compensation
- Lecture 9: Road Accident Fund Act 56 of 1996
- Lecture 10: Road Accident Fund Act 56 of 1996 (continued)
- Lecture 11: Road Accident Fund Act 56 of 1996 (continued)

SECTION B – SPECIFIC FORMS OF LIABILITY: PSYCHOLOGICAL OR EMOTIONAL HARM

- Lecture 12: Pain and Suffering | Emotional Shock

SECTION C – SPECIFIC FORMS OF LIABILITY: PERSONALITY INTERESTS

- Lecture 13: Infringement of Bodily Interests
- Lecture 14: Infringements of Dignity, Privacy and Identity
- Lecture 15: Infringements of Dignity, Privacy and Identity (continued)
- Lecture 16: Infringements of Reputation
- Lecture 17: Infringements of Reputation (continued)
- Lecture 18: Grounds of Justification for Infringements of Personality Interests
- Lecture 19: Grounds of Justification for Infringements of Personality Interests (continued)
- Lecture 20: Actio Iniuriarum: Assessment and Quantification of Satisfaction Award

SECTION D – FORMS OF STRICT LIABILITY

- Lecture 21-22: Harm caused by animals | Strict liability imposed by legislation
- Lecture 23: Vicarious Liability

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' ✓ Individual or group assignment of 2 500-3 000 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. ✓ Individual or group assignment of 2 500-3 000 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 them and give clear written advice on the likely outcome of the dispute raised by the facts in coherent language.	<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. ✓ Individual or group assignment of 2 500-3 000 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.	Students must: <ul style="list-style-type: none"> ✓ submit a group assignment; ✓ provide evidence of their participation in the preparation of the assignment; 	<ul style="list-style-type: none"> ✓ Group assignment. ✓ Minutes of group meetings in which the group records its activity. ✓ A document in which students

	<ul style="list-style-type: none"> ✓ Reflect on the value and constraints of group work. 	<p>assess the effectiveness of the group as a whole as well as the participation of individuals in the group.</p>
<p>The ability to use public policy and the Constitution to solve delict problems in a creative and critical manner.</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 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. ✓ Individual or group assignment of 2 500-3 000 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.
<p>The confidence to rely primarily on reasoning ability rather than on precedent when seeking solutions to problems.</p>	<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 to the facts before them. ✓ 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"> ✓ Class discussions in which students are required to resolve issues according to delictual principles and to explore new ways of applying these principles. ✓ Individual or group assignment of 2 500-3 000 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.