



RHODES UNIVERSITY
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Grahamstown • 6140 • South Africa
FACULTY OF LAW • Tel: (046) 603 8427/8 • Fax: (046) 6228960
Web Page: <http://www.ru.ac.za/law>

LAW OF DELICT B

2011

COURSE OUTLINE

LECTURER: ADV J. McCONNACHIE

1 INTRODUCTION

OVERVIEW

The Law of Delict is taught in the penultimate year of study in the LLB program and consists of two semester courses: **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 so as 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

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
- 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)
- 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 rote-learning 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 the course outline, lists of prescribed material according to topics and exercise questions for each lecture and/or topic. The sole object of the exercise questions is to guide students through the prescribed material as they prepare for lectures by focussing on the most important basic principles. These questions are not representative of the type of questions to be expected in the test or examination (see point 6 below). The lectures will follow the structure of the study guide. Students will thus be expected to prepare the topics in advance. Students will thus be assumed to be familiar with the prescribed material and the focus during lectures will mainly be on how the principles of law are applied.

Student participation during lectures is encouraged. 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 in terms of which a certain amount of work must be covered so as to facilitate due completion of the course within the estimated 24 lectures. In lectures before the test and during some of the last lectures of the course, test and exam type questions will be done in order to provide students with a practical understanding of what is expected of them for

purposes of the test and exam. These test and exam questions will be made available to students on *RUconnected* before the due discussion lectures. Students will be expected to have worked out the questions before the discussion lectures in order to promote the benefit of such discussions.

The lecturer makes extensive use of the university's electronic teaching aids. Course documents (study guide and lecture slides) will be available to students on *RUconnected*. The *News Forum* in the Delict B 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 B 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 rarely a single approach to a 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 or principles 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:

A list of prescribed reading material is listed according to topic/lecture in the Study Guide that is provided to students in hard copy.

TAKE NOTE: Important new cases and journal articles which appear during the course of the semester may 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	ARTS MAJOR
LECTURE TIMES	MONDAYS 09:35-10:20 FRIDAYS 12:20-13:05

Attendance of lectures is compulsory. The Law Faculty regards attendance at lectures as an inherent part of the course. Therefore, a class register will be circulated during these contact sessions in order to record lecture attendance for purposes of DP requirements. **Students carry the responsibility to keep record of the lectures they do not attend.**

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 15 marks. The **sum** 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 November counting 70 marks. Students can expect problem-type questions and case discussion questions in the examination.

Students who fail Delict B in the November 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 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).

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' ✓ An assignment of 2500-3500 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. ✓ An assignment of 2500-3500 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. ✓ An assignment of 2500-3500 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.
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. ✓ An assignment of 2500-3500 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 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. ✓ An assignment of 2500-3500 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.

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

Note: the structure below contains only the estimated time to be spent on a particular topic. Depending on various factors, some deviation may occur during the course of the semester.

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

- Lecture 1-2: Omissions | Negligent Misstatements
- Lecture 3-4: Pure Economic Harm | Interference with Contractual Relations
- Lecture 5-6: Unlawful Competition
- Lecture 7: Product Liability
- Lecture 8-9: Breach of Statutory Duty | Public Authorities
- Lecture 10-11: Professional Liability
- Lecture 12: Injury or Death of another Person
- Lecture 13-14: Introduction to Third Party Compensation | Road Accident Fund Act 56 of 1996

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

- Lecture 15: Emotional Shock

SECTION C – SPECIFIC FORMS OF LIABILITY: PERSONALITY INTERESTS

- Lecture 16: Infringement of Bodily Interests (Focus on wrongful arrest and detention)
- Lecture 17: Infringements of Dignity, Privacy and Identity
- Lecture 18-19: Infringements of Reputation
- Lecture 20: Grounds of Justification for Infringements of Personality Interests
- Lecture 21: Actio Iniuriarum: Assessment and Quantification of Satisfaction Award

SECTION D – LIABILITY

- Lecture 22: Strict Liability: General Introduction | Actio de Pauperie
- Lecture 23-24: Vicarious Liability