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THE LAW OF DELICT

2014

COURSE OUTLINE



LECTURER: L NIESING

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Room s5

1 INTRODUCTION

OVERVIEW

The Law of Delict is a year-course taught in the penultimate year of study in the LLB program. The course is designed to provide students with a detailed understanding of the Law of Delict and to develop and enhance the skills that are necessary for legal practice in the context of delictual claims.

The content of this course is largely based on case law. Since the law of delict is largely based on common-law principles, it follows that case law represents the foundation for delictual principles and theory. Thus, it also follows that the law of delict does not consist of a static set of rules. It is a dynamic subject which continues to develop mainly through caselaw; 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

20 Credits

ASSUMPTIONS OF PRIOR LEARNING

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

2 OUTCOMES

2.1. CRITICAL OUTCOMES

- Recognise problem-solving contexts
- Identify and solve legal problems by using the principles of the law of delict
- Organise and manage time and studies
- Collect, analyse and evaluate information
- Application of theoretical knowledge to practical scenarios
- Write clear, effective, concise and systematic solutions to delictual problems
- 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 write clear and systematic arguments as the solution to a legal problems
- 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 outside the contact sessions. 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 Law of Delict 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 Law of Delict 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 2ed (2011) *The Law of Delict in South Africa* (Oxford University Press, Cape Town, RSA)

OTHER TEXTBOOKS:

Neethling, Potgieter and Visser *Law of Delict*

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

CASE LAW, LEGISLATION AND JOURNAL ARTICLES:

Refer to the Law of Delict 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 year 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 45-minute lectures per week. 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 attendance for purposes of DP requirements. **Students carry the responsibility to keep record of the lectures they miss.**

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

6 ASSESSMENT

	Maximum
Class Work	40
Examination	60
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 five assessments spread over the course of the year. These five assessments will be in the form of tests and assignments: there will be one assessment per term (either a test or an assignment) on work specified by the lecturer and one (bigger) test halfway through the year that will be on all work done thus far.

Information regarding the assessments will be communicated to students as soon as the general faculty schedule for LLB assessments has been finalised.

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. Assignment questions will mostly focus on general research skills, legal reasoning and analysis.

EXAMINATION:

Students will write a 3-hour examination paper, counting 60 marks, during the November examination. For purposes of the examination, holistic and integrated knowledge and understanding will be assessed.

Students can expect mostly problem-type questions in the examination. In answering these problem-type questions, students are required to give a systematic and comprehensive explanation of the theoretical principles applicable to the scenarios, use appropriate 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 formulate a suitable conclusion based on the particular instruction in the question at hand. 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 must refer to the guidelines for problem-solving as set out in Section E of the Survival Guide on p56-63. These guidelines will be continually re-inforced in lectures in preparation for all assessments.

Students who fail Law of Delict in the November examination, may qualify to write a supplementary examination in January/February 2015. Supplementary examinations can only be taken subject to the Faculty Policy as set out in the *Survival Guide*.

7 EVALUATION

Students are requested to complete evaluation questionnaires according to the Law Faculty's evaluation cycles. For purposes of these evaluations, students are encouraged to voice their comments, whether written or verbal, in terms of the structure, outcomes and general impressions 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.

8 COURSE CONTENT

SECTION A – INTRODUCTION

- Topic 1: The Law of Delict: definition, nature, functions and purpose
Topic 2: Elements of a Delict; Systematic approach to delictual problem-solving; General principles modified for specific actions
Topic 3: The three delictual actions: *actio legis Aquiliae*, germanic action and the *actio iniuriarum*; contextualising the elements of each action
Topic 4: The impact of the constitution on the Law of Delict
Topic 5: Introduction to exclusions of delictual liability: exemption clauses; liability in contract; prescription of claims; legislative measures

SECTION B – ELEMENTS OF A DELICT

- Topic 6: Harm
Topic 7: Conduct
Topic 8: Causation
Topic 9: Introduction to Fault; Accountability
Topic 10: Forms of Fault: Intention and defences that exclude intention
Topic 11: Forms of Fault: Negligence (general and professional)
Topic 12: Wrongfulness
Topic 13: Defences that exclude wrongfulness
Topic 14: Specific forms of wrongfulness: negligent misstatements; interference with contractual relations; unlawful competition; product liability.
Topic 15: Forms of delictual liability with attenuated requirements: action of dependants; public authorities; emotional shock; defamation; wrongful arrest and detention

SECTION C – THIRD-PARTY COMPENSATION SCHEMES

- Topic 16: Road Accident Fund Act 56 of 1996
Topic 17: Compensation of Occupational Injuries and Diseases Act 130 of 1993

SECTION D – STRICT LIABILITY

- Topic 18: Vicarious liability
Topic 19: Actio de pauperie
Topic 20: Consumer Protection Act 68 of 2008

SECTION E – REMEDIES, APPORTIONMENT OF FAULT AND REDUCTION OF DAMAGES

- Topic 21: Delictual Remedies
Topic 22: Assessment and quantification of damages: *actio legis Aquiliae*, Germanic action and the *actio iniuriarum*
Topic 24: Joint Wrongdoers
Topic 25: Reduction and apportionment of damages

ASSESSMENT ANNEXURE

SPECIFIC OUTCOMES	ASSESSMENT CRITERIA	ASSESSMENT TASKS
<p>The ability to find relevant and appropriate legal principles and authority for propositions and, in particular, to extract delictual principles from cases.</p>	<p>Students must demonstrate that they are able to refer to principles of law extracted from relevant cases and text books.</p>	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to explain principles. ✓ Individual/group assignments, tests and a 3-hour final examination in which questions are set to test knowledge and understanding of the law through the use of appropriate legal authorities.
<p>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.</p>	<p>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.</p>	<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/group assignments, tests and a 3-hour final examination in which questions are set to test students' ability to analyse a factual scenario with the purpose of providing a legal argument aimed at resolving the legal issues.
<p>The ability to advise on and communicate legal issues in writing.</p>	<p>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.</p>	<ul style="list-style-type: none"> ✓ Class discussions in which students are asked to identify issues from factual scenarios and to advise on the likelihood of liability through application of relevant principles of law. ✓ Individual/group assignments, tests and a 3-hour final examination in which questions are set where students have to give legal advice.
<p>The ability to organise and manage a voluminous workload.</p>	<p>Students must demonstrate that they are prepared for class discussions, assignments, tests and the examination and that they meet the deadlines set for them.</p>	<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. ✓ Tests. ✓ A 3-hour final examination.
<p>Recognising the value and constraints of team work.</p>	<p>Students may be required to:</p> <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 assess the effectiveness of the

	<ul style="list-style-type: none"> ✓ Reflect on the value and constraints of group work. 	<p>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 delictual 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 involve scenarios that raise Constitutional issues so as to consider possible avenues for reform. ✓ Individual/group assignments, tests and a 3-hour final examination with 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 where there is no clear authority, and to explore new ways of applying these principles. ✓ Individual/group assignments. ✓ A 3-hour final 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.