



RHODES UNIVERSITY
Where leaders learn

Faculty of Law
Law of Delict 2018

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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)

SCHEDULE

WEEK	DATE	TOPIC	ASSESSMENTS
1	12-16 Feb	General Introduction & Conduct	
2	19- 23 Feb	Introduction to Harm	
3	26 -02 March	Factual Causation	
4	05-09 March	Legal Causation	
5	12-16 March	Revision/Tutorial Exercises	Test 1
6	19-23 March	Revision & assignment brief	
STUDY BREAK			
7	09-13 April	Fault: Intention	Assignment 1
8	16-20 April	Fault: Negligence (1)	
9	23-27 April	Fault: Negligence (2)	
10	30-04 April	Fault: Negligence (3)	
11	7-11 May	Contributory fault	
12	14-18 May	Liability without fault	
13	21-25 May	Revision & Test Prep	
SWOT WEEK& EXAMS			
VACATION			
14	16-20 July	Wrongfulness: Commissions	
15	23-27 July	Wrongfulness: Omissions (1)	
16	30-07 July	Wrongfulness: Omissions (2)	Assignment 2
17	06-10 August	Damages: rules and policy limitations (1)	
18	13-17 August	Damages: rules and policy limitations (2)	
	20-24 August	Revision & Test	Test 2
STUDY BREAK			
19	03-07 Sept	Special Forms of Liability (1)	
20	10-15 Sept	Special Forms of Liability (2)	
21	17-21 Sept	Infringement of Personality	

		Interests (1)	
22	24-28 Sept	Infringement of Personality Interests (2)	
23	01-05 October	General Defences	
24	08-12 October	Additional Statutory Forms of Compensation	
25	15-19 October	Revision & Exam Prep (2)	
SWOT WEEK			
EXAMS			

COURSE CONTENT

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.

Prescribed Reading

Loubser and Midgley (eds): Chapter 1, 2 & 3

Neethling and Potgieter: Chapter 1

Matthews v Young 1922 AD 492

Hoffa v SA Mutual Fire & General Insurance Co. Ltd 1965 (2) SA 944 (C)

Fose v Minister of Safety and Security 1997 (3) SA 786 (CC)

Telematrix (PTY) v Advertising Standards Authority SA 2006 (1) SA 461 (SCA)

Carmichele v Minister of Safety and Security (4) SA 938 (CC)

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.

Prescribed Reading

Loubser and Midgley (eds): Chapter 4

Neethling and Potgieter: Chapter 2

The Government v Marine & Trade Insurance Co Ltd 1973 (3) SA 797 (C)

Minister van Polisie v Ewels 1975 (3) SA 590 (A)

Mabaso v Felix 1981 (3) SA 865 (A)

Molefe v Mahaeng 1999 (1) SA 562 (SCA)

Minister van Veiligheid en Sekuriteit v Geldenhuys 2004 (1) SA 515 (SCA)

TOPIC 3

Harm

The purpose of these lectures will introduce you to the concept of harm. The distinction between patrimonial loss and non-patrimonial loss will be examined as well as infringements of a personality interest.

Prescribed Reading

Loubser and Midgley (eds): Chapter 4

Neethling and Potgieter: Chapter 2

Fourie v Naranjo 2008 (1) SA 192 (C)

Union Government v Warneke 1911 AD 657

Jowell v Bramwell-Jones 2000 (3) SA 274 (SCA)

Southern Insurance Association v Bailey NO 1984(1) All SA 98 (A)

Khumalo v Holomisa 2002 5 SA 401 (CC)

TOPIC 4

Causation

Factual Causation

Loubser and Midgley (eds) Chapter 5 (69-84)

Neethling and Potgieter Chapter 5 (183-196)

Minister of Police v Skosana 1977 (1) SA 31 A

International Shipping Co (pty) Ltd v Bentley (1) SA 680 (A) 700E-701C

First National Bank of South Africa Ltd v Duvenhage 2006 5 SA 319 (SCA) 324-325

Lee v Minister of Correctional Services 2013 (2) SA 144 (CC)

Legal Causation

Loubser and Midgley (eds) Chapter 6 (89-100)

Neethling and Potgieter Chapter 5 (197-219)

S v Mokgethi 1990 (1) SA 39J-41B

Smit v Abrahams 1994 (4) SA 1
In re Polemis (1921) 3 KB 560 (CA)
The Wagon Mound [Overseas Tankship (UK) Ltd v The Miller Steamship Co [1967] 1 AC 617
Fourway Houlage SA (Pty) Ltd v SA National Roads Agency Ltd 2009 (2) SA 150 (SCA)

Novus Actus Interveniens

Alston v Marine and Trade Insurance 1964 (4) SA 112 (W)
Parity Insurance Co Ltd v Van den Bergh 1966 (4) SA 112 (W)
Road Accident Fund v Russel 2001 (2) SA 34 (SCA)

TOPIC 5

Fault

This week you will be introduced to the concept of fault and its definitions. Intention as a form of fault will be examined as well as the capacity and accountability of minors. Fault will also be distinguished from wrongfulness.

Prescribed Reading

Loubser and Midgley (eds): Chapter 7 (pages 102-117)
Neethling and Potgieter: Chapter 4 (pages 129-136)

Cape Town Municipality v Bakkerud 2000 (3) SA 1049 (SCA) (para 9)
Local Transitional Council of Delmas v Boshoff 2005 (5) SA 490 (SCA)
Weber v Santam Versekeringsmaatskappy Bpk 1983 (1) SA 381 (A)
Eskom Holdings Ltd v Hendricks 2005 (5) SA 503 (SCA)
Minister for Justice and Constitutional Development v Moleko 2008 (3) SA 47 (SCA)
Maisel v Van Naeren 1960 (4) SA 836 (C)
Le Roux v Dey 2011 (3) SA 274 (CC)

Supplementary Reading

The Child Justice Act 75 of 2008
J Neethling 'The conflation of wrongfulness and negligence: Is it always a bad thing for the law of delict?' 2006 *SALJ* 2006
RW Nugent 'Yes, it is always a bad thing for the law: A reply to Professor Neethling' 2006 *SALJ* 557

Negligence (introduction)

In these lectures you will be introduced to the general test for negligence as well as the standard of the reasonable person. These lectures will also be used to explain what is meant by foreseeability and preventability as well as circumstances that require a higher standard of care, as demanded by law. The final lecture will be dedicated to a discussion on contributory negligence.

Loubser and Midgley (eds): Chapter 7 (117-138)

Neethling and Potgieter: Chapter 4 (137-166)
R v Mbombela 1933 AD 269
Herschel v Mrupe 1954 (3) SA 464(A)
Kruger v Coetzee 1966 (2) SA 428 (A)
Sea Harvest Corp v Duncan Dock 2000 (1) SA 827 (SCA)
MV Stella Tingas Transnet Ltd Portnet v Owners of the MV Stella Tingas 2003 2 SA 473 (SCA)

Reasonable Foreseeability

Kruger v Coetzee 1966 (2) SA 428 (A)
Mukheiber v Raath 1999 (3) SA 1065 (SCA)
Sea Harvest Corp v Duncan Dock 2000 (1) SA 827 (SCA)
Botes v Van Deventer 1966(3) SA 182(A)
Minister van Polisie en Binnerlandse Sake v Van Aswegen 1974 (2) SA 101 (A)

Unforeseeable harm & the unforeseeable plaintiff

Smith v Leech Brain [1962] 2 QB 405
Murray v Union & South West Africa Insurance 1979 (2) SA 825 (D)
Palsgraf v Long Island Railroad Company 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928)
Bourhill v Young [1943] AC 92
Workmen Compensation Commissioner v De Villiers 1949 (1) SA 474 (C)
Prince v Minister of Law and Order 1987 (4) SA 231 (E)
Daniels v General Accident Insurance LTD 1992 (1) SA 757 (CPO)
Moni v Mutual & Federal Versekeringsmaatskappy Bpk 1992 (2) SA 600 (T)
Stansbie v Troman [1948]2 KB 48
General Accident Insurance v Xhego [1992] 1 All SA 414 (A)
Van der Merwe v Union Government 1936 TPD 185
Moor v Minister of Posts and Telegraphs 1949 (1) SA 815 (A)
PRQ Boberg *The Law of Delict* (1984) pages 308-326
M Dendy 'A fresh perspective on the unforeseeable plaintiff' (1990) *SALJ* 45
J R Midgley 'The unforeseeable plaintiff and liability towards trespassers' (1992) *SALJ* 575

Reasonable Preventability

Kruger v Coetzee 1966 (2) SA 428 (A)
Robertson v Durban Turf Club 1970 (4) SA 649 (N)
Pretoria City Council v De Jager 1997 (2) SA 46 (A)
Bolton v Stone [1951] AC 850
Cape Metropolitan Council v Graham [2001] 1 All SA 215 (A)
Wasserman v Union Government 1934 AD 228
Lomagundi Sheetmetal & Engineering v Basson 1973 (4) SA 523 (RA)
Knouws v Administrateur, Kaap 1981 (1) SA 544 (C)
Minister of Education v Wynkwart NO 2004 (3) SA 577 (C)
Member of the Executive Council of Gauteng Responsible for Education v Rabie (A758/06) [2008] ZAGPHC 71

Contributory Fault

Loubser and Midgley (eds) Chapter 34 (435-440)
Neethling and Potgieter Chapter 4 (167-182)

The Apportionment of Damages Act 34 of 1956
Davies v Mann (1882) 10 M & W
South British Insurance v Smith 1962 (3) SA 826 (A)
Jones NO v Santam Bpk 1965 (2) SA 546 (A)
Eskom Holdings v Hendricks 2005 (5) SA 503 (SCA)
AA Mutual Insurance Association Ltd v Nomeka 1976 (3) SA 45 (A)
Minister van Wet en Orde v Ntsane 1993 (1) SA 560 (A)
Weber v Santam Versekeringsmaatskappy Bpk 1983 (1) SA 381 (A)
Bowkers Park Komga Co-operative Ltd v SAR & H 1980 SA 91 (E)
Vorster v AA Mutual Insurance Association Ltd 1982 (1) SA 145 (T)
Union National South British Insurance Co Ltd v Victoria 1982 (1) SA 444 (A)
General Accident Versekeringsmaatskappy v Uijs NO 1993 (4) SA 228 (A)
Lampert v Hefer 1955 (2) SA 507 (A)
Netherlands Insurance Co of SA Ltd v Van der Vyver 1968 (1) SA 412 (A)
Santam Insurance Co Ltd v Voster 1973 (4) SA 764 (A)
Malherbe v Eskom 2002 (4) SA 497 (O)
Greater Johannesburg Transitional Metropolitan Council v ABSA Bank Ltd t/a Volkskas Bank 1997 (2) SA 691 (W)

Contributory negligence of minors

Weber v Santam Versekeringsmaatskappy Bpk 1983 (1) SA 381 (A)
Eskom Holdings v Hendricks 2005 (5) SA 503 (SCA)
Bowkers Park Komga Co-operative Ltd v SAR & H 1980 (1) SA 91 (E)
Voster v AA Mutual Insurance Association Ltd 1982 (1) SA 145 (T) 85
Union National South British Insurance Co Ltd v Vitoria 1982 (1) SA 444 (A)
General Accident Versekeringsmaatskappy SA Bpk v Uijs NO 1993 (4) SA 228 (A).

Liability without fault

Vicarious liability

Minister of Police v Rabie 1986 (1) SA 117 (A)
K v Minister of Safety and Security 2005 (6) SA 419 (CC)
F v Minister of Safety and Security and Another 2012 (1) SA 536 (CC)
JA Linscott 'A critical analysis of the majority judgement in *F v Minister of Safety and Security* 2012 1 SA 536 (CC) in [\[PER / PELJ 2014\(17\) 6\]](#)

TOPIC 6

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.

Prescribed Reading

Loubser and Midgley (eds): Chapter 8
Neethling and Potgieter: Chapter 3 (pages 33-86)

Cape Town Municipality v Paine 1923 AD 207
Hershel v Mrupe 1954 (3) SA 464 (A) para 489-490
Minister van Polisie v Ewels 1975 (3) SA 590 (A)
University van Pretoria v Tommie Meyer Films (Edms) Bpk 1977 (4) SA 376 (T)
Faiga v Body Corporate of Dumbarton Oaks & Another 1997 (2) SA 651 (W)
Cape Town Municipality v Bakkerud (2000) SA 1049 (SCA) para [11]-[18]
Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA)
Van Eeden v Minister of Safety & Security 2003 (1) SA 389 (SCA)
Minister of Safety and Security v Hamilton 2004 (2) SA 216 [229]-[230]
Telematrix v Advertising Standards Authority 2006 (1) SA 461 (SCA) para [12]-[13]
Two Oceans Aquarium Trust v Kantey & Templer 2006 (3) SA 138 (SCA) para [10]-[11]
Lee v Minister of Correctional Services 2013 (2) SA 144 (CC)
BS v MS and Another 2015 (6) SA 356 (GP)

Supplementary Reading

M.M. Corbett 'Aspects of the Role of Policy in the Evolution of Our Common Law' 1987 *SALJ* 52

M Pieterse 'The right to be free from public/private violence after *Carmichele*' 2002 *SALJ* 27

Breach of a legal duty

In this section we will be looking at the breach of a legal duty which is one of the tests used to determine wrongfulness of omissions. We will also touch on the traditional crystallised categories as developed through case law. If time permits we will also commence with the development and evolution of this area of law in South Africa's constitutional dispensation failing which, that section of the work will be covered in next week's lecture.

Prescribed Reading

Loubser and Midgley (eds): Chapter 8 & 21

Neethling and Potgieter: Chapter 3 (pages 33-86)

Prior Conduct

Haliwell v Johannesburg Municipality Council 1912 AD 65

SAR & H v Estate Saunders 1931 (AD) 276

Silva's Fishing Corporation (Pty) Ltd v Maweza 1957(2) SA. 256 (A)

Donoghue v Stevenson, [1932] AC 562

Minister van Polisie v Ewels 1975 (3) SA 590 (A)

Regal v African Superslate (Pty) Ltd 1963 (1) SA 102 (A)

Van Eeden v Minister of Safety and Security 2003 (1) SA 389 (SCA)

Control of a dangerous object/situation; Special Relationship; Public Office, etc.

Minister of Forestry v Quathlamba (Pty) Ltd 1973 (3) SA 69 (A)

S v Van As 1967 (4) SA 594 (A)

Macadamia Finance Ltd v De Wet 1991 (4) SA 273 (T)

Contractual obligation & Creation of an impression that the interests of a third party will be protected.

Blore v Standard General Insurance Co Ltd en 'n Ander 1972 (2) SA 89 (O)

S v Russel 1967 (3) 739 N

Compass Motors Industries (Pty) Ltd v Callguard (Pty) Ltd 1990 (2) SA 520 (W)

Development of wrongfulness in our constitutional dispensation

Cape Town Municipality v Bakkerud 2000 (3) SA 1049 (SCA)
Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC)
Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA)
Van Eeden v Minister of Safety and Security 2003 (1) SA 389 (SCA)
Minister of Safety and Security & another v Carmichele 2004 (3) SA 305 (SCA)
Minister of Safety and Security v Hamilton 2004 (2) SA 216 (SCA)
Local Transitional Council of Delmas v Boshoff 2005 (4) SA 175 (SCA)
Loureiro v iMvula Quality Protection 2014 (3) SA 394 (CC)
Country Cloud Trading CC v MEC, Department of Infrastructure Development, Gauteng 2015 (1) SA 1 (CC)
Steenkamp NO v Provincial Tender Board of the Eastern Cape 2007 (3) SA 121 (CC)
MEC for Education, Western Cape Province v Strauss 2008 (2) SA 366 (SCA)

TOPIC 7

Law of Damages

The purpose of these lectures will introduce you to the rules and policy limitations applicable to both patrimonial and non-patrimonial loss insofar as the scope of damages which are recoverable in law. 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 that arise when dealing with unconscious plaintiffs.

Readings

Neethling and Potgieter: 221-263
Loubser and Midgley (eds) pages: 401-430

Prescribed cases

Introduction to damages

Union Government (Minister of Railways and Harbours) v Warneke 1911 AD 657
Dhlamini v Protea Assurance Co Ltd 1974 (4) SA 906 (A)
Santam Insurance Ltd v Ferguson 1985(4) SA 843(A)
Heese NO v Road Accident Fund 2012 (6) SA 88 (SCA)
MEC, Department of Welfare, Eastern Cape v Kate 2006 (4) SA 478 (SCA)
Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd
President of the Republic of South Africa v Modderklip Boerdery (pty) Ltd 2004
Modderfontein Squatters, Geater Benoni City Concil v Modderklip Boerdery
(PTY) LTD (Agri SA and Legal Resources Centre Amici Curiae), President of the Republic of
the South Africa and Others v Modderklip Boerdery (PTY) LTD (Agri SA and Legal
Resources Centre Amici Curiae) 2004 (6) SA 40 (SCA)
Fose v Minister of Safety and Security 1997 (3) SA 786 (CC)
Halstead-Cleak v Eskom Holdings Ltd (26360/14) [2015] ZAGPPHC 632; 2016 (2) SA 141
(GP) (1 June 2015)
MEC for the Department of Public Work, Roads and Transport v Botha (20811/2014) [2016]
(17 March 2016)
'Once and for all' rule
Evans v Shield Insurance Co Ltd 1980 (2) SA 814 (A)

Oslo Land Co Ltd v Union Government 1938 AD 584

'Mitigation of loss' rule

Macs Maritime Carrier AG v Keeley Forwarding & Stevedoring 1995 (3) SA 377 (D)

Kellerman v South African Transport Services 1993 (4) SA 872 (C)

Shrog v Valentine 1949 (3) SA 1228 (T)

Prospective Loss

Beverly v Mutual & Federal Insurance CO Ltd 1988 2 SA 267 (D)

Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)

Burger v Union National South British Insurance Co 1975 (4) SA 72 (W)

President Insurance Co Ltd v Mathews 1992 (1) SA 1 (A)

Raath v Nel [2012] 4 All SA 26 (SCA)

Loss of support

Coughlan NO v Road Accident Fund 2015 (4) SA 1 (CC)

Minister of Police v Mboweni and Another 2014 (6) SA 256 (SCA)

Paixão and Another v Road Accident Fund 2012 (6) SA 377 (SCA)

Engela v Road Accident Fund 2016 (1) SA 214 (GJ)

Patrimonial loss and collateral benefits

Erasmus v Davies 1969 (2) SA 1 (A)

Standard General Insurance Co Ltd v Dugmore NO 1997 (1) SA 33 (SCA)

Road Accident Fund v Duma and Three Other Related Cases (Health Professions Council of South Africa as amicus curiae) [2013] 1 All SA 543 (SCA)

Non-patrimonial loss

Southern Insurance Association v Bailey 1984 (1) SA 98 (A)

Du Bois v Motor Vehicle Accident Fund 1992 (4) SA 368 (T)

Non-patrimonial loss: the unconscious plaintiff

Gerke NO v Parity Insurance Co Ltd 1966 (3) SA 484 (W)

Reyneke v Mutual and Federal Insurance Co Ltd 1991 (3) SA 412 (W)

Collins v Administrator, Cape 1995 (4) SA 73 (C)

TOPIC 8

Special Forms of Liability

Pure Economic Loss

In these lectures you will be introduced to the concept of pure economic loss. These lectures will be used to examine the rules and principles which apply when pure economic loss arises from a negligent misstatement or from interference with a contractual relationship.

Prescribed Reading (Please also consult the relevant chapters in Loubser and Midgley (eds) and Neethling and Potgieter)

Weller & Co & another v Foot and Mouth Disease Research Institute [1966] 1 QB 569A

Hershel v Mrupe 1954 (3) SA 464 (A).

Union Government v Ocean Accident & Guarantee Corporation Ltd 1956 (1) SA 577 (A)

Bayer South Africa (Pty) Ltd v Frost 1991 (4) SA 559 (A)

Standard Chartered Bank of Canada v Nedperm Bank Ltd 1994 (4) SA. 747 (A)

Perlman v Zoutendyk 1934 CPD 151

Administrateur, Natal v Trust Bank van Afrika Bpk 1979 (3) SA 824 (A),

EG Electric Co (Pty) Ltd v Franklin 1979 (2) SA 702 (EC)

Atlas Organic Fertilizers v Pikkewyn Ghwano (1981) 2 SA 173 T
Sanlam Capital Markets (Pty) Ltd v Mettle Manco (Pty) Ltd [2014] ZAGPJHC 134
Minister of Safety and Security v Scott (969/2013) [2014] ZASCA 84
Country Cloud Trading CC v MEC Department of Infrastructure Development 2015 (1) SA 1 (CC);

Interference with contractual relations

In this lecture we will examine whether a contracting party should have recourse to a delictual where he/she suffers pure economic loss as a result of a breach of a contract.

Prescribed Reading

Lillicrap, Wassenaar and Partners v Pilkington Brothers (SA) (Pty) Ltd [1985] 1 All SA 347 (A)
Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd [2005] ZASCA 109
Holtzhausen v Absa Bank Ltd [2004] ZASCA 79; 2008 (5) SA 630 (SCA) [2005] 2 All SA 560 (SCA)
D Hutchison & DP Visser 'Lillicrap Revisited: Further Thoughts on Pure Economic Loss and Concurrence of Actions' (1985) 1032 *SALJ* 587
J M Burchell & M Dendy 'The Borderland between Delict and Contract and the Problem of Pure Economic Loss' 1985 *Annual Survey of South African Law* 181

Unlawful Competition

Atlas Organic Fertilizers v Pikkewyn Ghwano (1981) 2 SA 173 T
Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd 1993 2 SA 307 (A)
Woodlands Diary (Pty) Ltd v Parmalat SA (Pty) Ltd 2002 2 SA 268 (E)
Stellenbosch Wine Trust Ltd v Oude Meester Group Ltd 1977 2 SA 221 (C).

Product Liability

Ciba-Geigy (Pty) Ltd v Lushof Farms (Pty) Ltd 2002 (2) SA 447 (SCA)
Wagener v Pharmacare Ltd and Cuttings v Pharmacare Ltd [2003] 2 All SA 167 (SCA)
Freddy Hirsch Group (Pty) Ltd v Chickenland (Pty) Ltd [2011] 3 All SA 362 (SCA)
Escola v Coca-Cola Bottling Co of Fresno 150 P 436 (1944) 440
Consumer Protection Act 68 of 2008

Psychological Lesion (emotional shock)

Bester v Commercial Union Versekeringsmaatskappy van SA Bpk 1973 (1) SA 769 (A)
Masiba & Another v Constantia Insurance Co Ltd & Another 1982 4 SA 333 (C).
Barnard v Santam Bpk 1999 (1) SA 202 (SCA)
Fourie v Naranjo and Another [2007] 4 All SA 1152
Hing v Road Accident Fund [2014] 2 All SA 186 (WCC)

TOPIC 9

Infringement of Personality Interests

In these lectures you will be introduced to the *action iniuriarum*-an action which protects against the intentional infringement of certain personality rights. The right relating to physical

integrity, dignity and good name will be considered. Defamation will also be introduced to students and the issue of *locus standi* in defamation actions will be examined.

Prescribed Reading

R v Umfaan 1908 TS 62

Delanger v Costa 1989 (2) SA 857

Financial Mail (Pty) Ltd & Others v Sage Holdings & Another 1993 (2) SA 451 (A)

Minister of Justice v Hofmeyer 1992(3) SA 108(C).

Defamation

National Media v Bogoshi Ltd and Others 1996 (3) SA 78 (W)

Argus Printing and Publishing v Esselen's Estate [1994] 2 All SA 160 (A)

Dhlomo NO v Natal News Papers (Pty) Ltd and Another 1989 (1) SA 945 (A)

Mthembu-Mahanyele v Mail and Guardian Ltd and Another [2004] 3 All SA 511 (SCA)

Khumalo v Holomisa 2002 5 SA 401 (CC)

Johnson v Beckett 1992 (1) SA 762 (AD)

Delta Motor Corporation (Pty) Ltd v Van der Merwe [2004] 4 All SA 365 (SCA)

Ketler Investments CC t/a Ketler Presentations v Internet Service Providers' Association 2013. ZAGPJHC 232

Dutch Reformed Church Vergesig v Sooknunan 2012 (6) SA 201 (GSJ) .

Isparta v Richter 2013 6 SA 4529 (GP)

A Roos, Professor of Private Law in the University of South Africa, 'Privacy in the Facebook Era: A South African Legal Perspective' (2012) 129 SALJ at 375

A Roos and M Slabbert 'Defamation on Facebook: Isparta v Richter 2013 6 SA 529 (GP)'

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Deprivation of freedom

Thandani v Minister of Law and Order 1991 (1) SA 702 (E)

Bennett v Minister of Police and Another 1980 (3) SA 24 (CPD)

Minister of Law & Order v Hurley 1986(3) SA 568(A)

Zealand v Minister of Justice and Constitutional Development (CCT54/07) [2008] ZACC 3

Minister of Justice v Hofmeyr 1992(3) SA 108(C)

General Defences

These lectures will consider some of the defences which are available against a claim for delictual damages including consent, private defence, necessity, etc.

Prescribed Reading

Lampert v Hefer NO 1955 (2) SA 507 AD

Santam Insurance Co Ltd v Voster 1973 (2) SA 186 (W)

Castell v De Greef 1994 (4) SA 408 (C)

Esterhuizen v Administrator, Transvaal 1957 (3) SA 710 (T)

Waring & Gillow Ltd v Sherborne 1904 TS 340 401

Stoffberg v Elliot 1923 CPD 148

Maartens v Pope 1992 4 SA 883 (N) 888

Johnson v Beckett 1992 (1) SA 762 (AD);

Poovalingham v Rajbansi 1992 (1) SA 283 (AD)
Neethling v Du Preez & Others; Neethling v The Weekly Mail & Others (184/91, 401/91)
[1993] ZASCA 203; 1994 (1) SA 708 (AD)
National Media v Bogoshi [1998] 4 All SA 347 (SCA)

TOPIC 10

Additional Statutory Forms of Compensation

In this section we will consider the manner and extent in which the law of delict has been developed by legislation enacted to compensate victims of harm. The relevant statutes will be flagged during lectures.

Compensation for Occupational Injuries and Diseases Act 130 of 1993 ('COIDA')
Occupational Diseases in Mines and Works Act 78 of 1973 (ODIMWA)
Road Accident Fund Act 56 OF 1996
Consumer Protection Act 38 of 2008
Mankayi v Anglogold Ashanti Ltd 2011 (3) DS 237 (CC)

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 4 formative assessment tasks and a final examination, 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. Two tests each contributing up to 15% towards your year mark.

The questions in the tests may take the form of theory and/or problem-type. 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.

2. Two research assignments each contributing 10% towards your year mark.

The assignments are aimed at assessing your ability to conduct in-depth research and the utilization of e-learning legal resources. You will be expected to provide cogent, systematic solutions to delictual problems and/or provide sound legal opinions. You will also be assessed on your ability to comply with conventions of ethical referencing. Overall, the task aim at gauging whether you are able to organise and manage your time and resources effectively.

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 60 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.