



RHODES UNIVERSITY
Where leaders learn

Faculty of Law

Law of Delict

Course Outline 2016

Course Teacher: Phumelele Jabavu
Office: S5
Tel: 046 603 7246
Email: p.jabavu@ru.ac.za

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 (in writing or orally) cogent, systematic solutions to delictual problems
- Organise and manage your time and resources effectively

The specific outcomes for each section/topic of the work are outlined in the reading list.

TEACHING METHODS

The three principal modes of teaching and learning in this course are lectures, tutorials 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.

Tutorials: The tutorials are primarily aimed at assisting students with tackling and solving delictual problems. Tutorials require active participation and students are thus expected to attend having already attempted to generate a solution(s) for the tutorial problem. Attendance is voluntary and students are strongly encouraged to make use of this platform to enhance their problem solving skills.

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)

ASSESSMENTS

Your competence will be assessed at a number of points during the year.

1. Research Assignment

The assignment question will be released on Wednesday, 16 March 2016 and the completed assignment is due on Wednesday, 6 April 2016. This assignment will account for 15% of your total mark.

2. June Test

The test will be written on Wednesday, 8 June 2016 (time and venue TBC). The test will account for 25% of your final mark. You will be tested on **all** the work covered in the first semester. The questions in this test may take the form of theory and/or problem-type question. Students should not expect an exam scope as one will not be provided. The aim is to assess your knowledge of the law and your ability to solve legal problems using legal reasoning. The test will be for a total of 50 marks and the duration of the paper will be 2 hours.

3. Semester 2 Test

The test will be written on Wednesday, 7 September 2016 (time and venue TBC) and will account for 10% of your final mark. It will **only** cover Topic 7 (Harm and the Law of Damages).

The questions in this test may take the form of theory and/or problem-type questions. Students should not expect a scope as none will be provided. The aim is to assess your knowledge of the law and your ability to solve legal problems using legal reasoning. The test will be for a total of 20 marks and will be for a duration of 45minutes.

4. Examination (Oct/Nov-50 marks=50%)

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 50 marks thus counting 50 % towards your final mark. The duration of the paper will be 2 ½ hours. Similarly to the tests, questions in the exam may take the form of theory and/or problem-type question. No scope will be provided. The aim is to assess your knowledge of the law and your ability to solve legal problems using legal reasoning. At this stage students 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 therefore cover everything however; an emphasis will be on sections covered in the second semester.

COURSE CONTENT

The following is an overview of the topics to be covered in this course. A reading list containing prescribed cases, articles and the relevant parts of the textbook to be studied for each section is provided separately. A copy of this outline together with the reading list and other relevant resources will be uploaded on *RU Connected*.

Topics:

1. Introduction to the Law of Delict

- Definition(s)
- Nature and purpose of the Law of Delict
- Historical context of the Law of Delict
- The Law of Delict in a Constitutional dispensation
- Delict and related concepts
- Essential elements and corresponding remedies

2. Conduct and onus of proof

- Nature and characteristics of Conduct
- The Defence of Automatism

3. Wrongfulness

- Introduction to wrongfulness
- Criteria for determining wrongfulness
- Wrongfulness and the infringement of a right
- Wrongfulness and breach of a legal duty
- Wrongfulness and breach of a statutory duty
- Public authorities

4. Fault

- Capacity for fault and accountability
- Intention
- Negligence
- Contributory Fault

5. Liability without fault

- Principles relating to liability without fault
- Vicarious liability
- Statutory liability

6. Causation

- Factual Causation
- Legal Causation

7. Harm and the Law of Damages

- Introduction to the concepts harm and damage(s)
- Principles applicable to patrimonial loss
- Principles applicable to non-patrimonial loss
- RAF, COIDA and the Prescription

8. Forms of liability

- Pure Economic Loss (including negligent misrepresentation)
- Contract/Delict overlap
- Product Liability
- Unlawful Competition
- Psychological lesion (emotional shock)
- Infringement of Personality Interests (including defamation)

9. Defences

- Grounds of Justification aimed at excluding Wrongfulness
- Grounds of Justification associated with the Infringement of Personality Interests

10. Professional Liability

- Errors and Omissions
- Positive Conduct