

DEPARTMENT OF PRIVATE LAW

**Law of Delict
PVL302X**

Tutorial Letter 201/1/2008

- 1 PRESCRIBED FOOTNOTE**
- 2 COMMENTARY ON ASSIGNMENT**
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1 PRESCRIBED FOOTNOTE

Treat Neethling, Potgieter and Visser *Law of Delict* 60 footnote 166 as part of your prescribed material. This footnote discusses the important *Carmichele* saga, and if you study the footnote well, you need not study the *Carmichele* case itself.

2 COMMENTARY ON ASSIGNMENT

ASSIGNMENT 01 (compulsory for first semester)

In each instance you had to identify the correct statement. Here we give you the number of each question, the number of each correct statement, and a brief explanation why the other statements are incorrect. Numbers in square brackets [] refer to page numbers in Neethling, Potgieter and Visser *Law of Delict* (2006).

Question 1: (1) is correct

(2) generalising, not casuistic [4]; (3) further requirements or elements must be met [3]; (4) main distinction is between delicts that cause patrimonial loss and those that cause injury to personality [5]; (5) they cover most, but not all [5].

Question 2: (2) is correct

(1) they do [6]; (3) the public interest [6]; (4) they may [7]; (5) some crimes do not constitute delicts [7]

Question 3: (5) is correct

(1) also to the *dignitas* [12]; (2) it was not [12]; (3) it also includes other personality interests [14]; (4) it is a remedy for certain specific forms [15]

Question 4: (2) is correct

(1) only natural and juristic persons can act [23]; (3) voluntary and willed are not the same [24]; (4) it cannot [24]; (5) it can [24]

Question 5: (4) is correct

1. two-pronged [31]; (2) it is [31]; (3) wrongfulness logically precedes fault [109]; (5) it does not [33]

Question 6: (2) is correct

(1) They are not [41]; (3) it can [43]; (4) where a clear norm or ground of justification is not applicable [43]; (5) it is not [50]

Question 7: (3) is correct

(1) objective [39]; (2) *prima facie* lawful [50]; (4) no such general duty [50]; (5) it is [50]

Question 8: (4) is correct

(1) it is [70]; (2) it is [70]; (3) the defence of automatism eliminates conduct, not wrongfulness [24]; (5) some available defences are not grounds of justification[e g 24]

Question 9: (5) is correct

(1) necessity, not private defence, because no human attacker is harmed [75 80]; (2) necessity[75 80]; (3) necessity [75 80]; (4) he does not [80 et seq]

Question 10: (4) is correct

(1) he must understand [94]; (2) it is not [94]; (3) it is [92]; (5) exceptions exist, for instance in medical treatment and sport [94]

3 EXAMINATION

3.1 Examination paper

Please note the following information on the examination paper:

- The question paper is a **fill-in paper**. Spaces are provided for your answers, and you will hand in the entire paper after you have answered the questions.
- The paper is in **both English and Afrikaans**. The Afrikaans version of a question follows directly after the English version.
- The duration of the examination is **two hours**, and the paper counts **100 marks**.
- Section A consists of 15 multiple-choice questions counting 30 marks in total.
- Section B consists of short and longer questions of which the allocation of marks vary from 1 mark to 10 marks per question. Section B counts 70 marks in total.

3.2 A previous examination paper

The following questions were taken from a previous examination paper as examples.

QUESTION 1

1.1 Write brief notes on the similarities and differences between breach of contract and delict. **(5)**

1.2 Write brief notes on the indirect application of the Bill of Rights to the law of delict. **(5)**

Total question 1: **[10]**

QUESTION 2

X is involved in an accident whilst driving his car. When he regains consciousness, he has no recollection of how the accident took place. He is hospitalised, and during treatment for head injuries the doctors determine that he suffered an epileptic fit at the time of the accident. The car of Y, the other person involved in the accident, is badly damaged. Can it be said that it was an act on the part of X that damaged Y's car? Will it make a difference to your answer if X had been receiving treatment for epilepsy before the accident, but had failed to take his medicine for several days before the accident took place? Discuss. **(10)**

Total question 2: **[10]**

QUESTION 3

In a certain town, the paved sidewalks are in a poor condition due to erosion. Several holes and furrows have developed in the sidewalks. The municipality neglects to repair the sidewalks, despite requests to this effect by several of the residents. One day Mrs M, an aged resident, inadvertently steps into a hole in a sidewalk, falls, and suffers serious injuries for which she is hospitalised for a month. Mrs M wishes to recover damages from the municipality in a delictual action. Discuss only whether the conduct of the municipality was wrongful. Refer in your answer to relevant case law. **(10)**

Total question 3: **[10]**

QUESTION 4

X stops at a busy filling station to have the petrol tank of his car filled up. While waiting for a pump attendant, he sees another person driving off and throwing a cigarette butt out through the car window. An explosion takes place, and the next moment there is a fire in the driveway close to one of the petrol pumps. X realises that the cigarette butt has ignited some petrol that has been spilt there. Having a quick look around, X sees a hosepipe which is usually used to wash cars. He opens the tap widely and sprays water on the fire. However, the water does not extinguish the fire. Rather, the burning petrol starts to float on top of the water, and is driven by the force of the water stream from the hosepipe to a position under a car belonging to Y, another customer at the filling station. Y's car catches fire, and by the time the pump attendants have managed to extinguish the fire with foam fire extinguishers, the car is badly damaged. Y wants to recover the damage to his car from X. Answer questions 4.1 and 4.2 in respect of this set of facts.

- 4.1 Was X's conduct wrongful? Discuss with reference to the test(s) for wrongfulness and a possible defence that X might want to raise. **(10)**
- 4.2 Now assume that X had indeed acted wrongfully. Was X negligent? Discuss with reference to the test for negligence and a possible defence that X might want to raise. **(10)**

Total question 4: **[20]**

QUESTION 5

5.1 When is a child accountable? Discuss. (4)

5.2 How is the negligence of a child wrongdoer determined? Discuss. (6)

Total question 5: [10]

QUESTION 6

X gives Y a lift in her car. Whilst driving, X talks continuously on her cell-phone, and also touches up her make-up. She collides with a tree. Y, who had not fastened her seat-belt, is injured in the accident. She is hospitalised and incurs hospital costs of R10 000. It transpires that if Y had fastened her seat-belt, her hospital costs would have totalled R6 000. Y institutes a damages claim of R10 000 against X. X approaches you for legal advice. Advise X, referring to applicable legislation and case law. (Assume for the purpose of your answer that the provisions of the Road Accident Fund are not applicable to this set of facts.) (10)

Total question 6: [10]

QUESTION 7

7.1 "X's conduct is a condition without which Y's damage would never have arisen."
Discuss this statement critically. (4)

7.2 What is the criterion to determine legal causation? Discuss. (6)

Total question 7: [10]

QUESTION 8

8.1 Define private defence. (2)

8.2 Define intent. (2)

8.3 Define damage. (2)

8.4 What is meant by the "once-and-for-all" rule? (2)

8.5 What is meant by the "sum-formula approach"? Explain briefly. (2)

Total question 8: [10]

QUESTION 9

9.1 Name four specific forms of *damnum iniuria datum*. (2)

9.2 How do the courts determine whether defamatory statements are wrongful? Discuss. (4)

9.3 Name the requirements for the *actio de pauperie*.

(4)

Total question 9: [10]

TOTAL FOR PAPER: [100]

We trust that you find your study of this module interesting and stimulating, and wish you every success with your final preparation for the examination.

This tutorial letter was compiled by Prof JC Knobel.

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