

# Delict

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Delict (from Latin *dēlictum*, past participle of *dēlinquere* 'to be at fault, offend') is a term in civil and mixed law jurisdictions whose exact meaning varies from jurisdiction to jurisdiction but is always centered on the notion of wrongful conduct.

In Scots and Roman Dutch law, it always refers to a tort, which can be defined as a civil wrong consisting of an intentional or negligent breach of duty of care that inflicts loss or harm and which triggers legal liability for the wrongdoer. Other civil wrongs include breach of contract and breach of trust. Liability is imposed on the basis of moral responsibility, i.e. a duty of care or to act, and fault (*culpa*) is the main element of liability. The term is similarly used in a handful of other English-speaking jurisdictions which derive their...

## Delict (Scots law)

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Delict in Scots law is the area of law concerned with those civil wrongs which are actionable before the Scottish courts. The Scots use of the term 'delict' is consistent with the jurisdiction's connection with Civilian jurisprudence; Scots private law has a 'mixed' character, blending together elements borrowed from Civil law and Common law, as well as indigenous Scottish developments. The term tort law, or 'law of torts', is used in Anglo-American (Common law) jurisdictions to describe the area of law in those systems. Unlike in a system of torts, the Scots law of delict operates on broad principles of liability for wrongdoing: 'there is no such thing as an exhaustive list of named delicts in the law of Scotland. If the conduct complained of appears to be wrongful, the law of Scotland will...

## Quasi-delict

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Quasi-delict is a French legal term used in some civil law jurisdictions, encompassing the common law concept of negligence as the breach of a non-wilful extra-contractual obligation to third parties.

## South African law of delict

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The South African law of delict engages primarily with 'the circumstances in which one person can claim compensation from another for harm that has been suffered'. JC Van der Walt and Rob Midgley define a delict 'in general terms [...] as a civil wrong', and more narrowly as 'wrongful and blameworthy conduct which causes harm to a person'. Importantly, however, the civil wrong must be an actionable one, resulting in liability on the part of the wrongdoer or tortfeasor.

The delictual inquiry 'is in fact a loss-allocation exercise, the principles and rules of which are set out in the law of delict'. The classic remedy for a delict is compensation: a claim of damages for the harm caused. If

this harm takes the form of patrimonial loss, one uses the Aquilian action; if pain and suffering associated...

## Obligatio ex delicto

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In Roman law, obligatio ex delicto is an obligation created as a result of a delict. While "delict" itself was never defined by Roman jurists, delicts were generally composed of injurious or otherwise illicit actions, ranging from those covered by criminal law today such as theft (furtum) and robbery (rapina) to those usually settled in civil disputes in modern times such as defamation, a form of iniuria. Obligationes ex delicto therefore can be characterized as a form of private punishment, but also as a form of loss compensation.

## Actio iniuriarum

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## Kruger v Coetzee

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In an action for damages alleged to have been caused by the defendant's negligence, culpa arises, for the purposes of liability, only if a diligens paterfamilias in the position of the defendant not only would have foreseen the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss, but would also have taken reasonable steps to guard against such an occurrence, and if the defendant failed to take such steps.

Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all, and, if so, what steps would be reasonable, must always depend upon the particular circumstances...

## Law of obligations

*further separates the law of obligations into contracts, delicts, quasi-contracts, and quasi-delicts. Nowadays, obligation, as applied under civilian law*

The law of obligations is one branch of private law under the civil law legal system and so-called "mixed" legal systems. It is the body of rules that organizes and regulates the rights and duties arising between individuals. The specific rights and duties are referred to as obligations, and this area of law deals with their creation, effects and extinction.

An obligation is a legal bond (vinculum iuris) by which one or more parties (obligants) are bound to act or refrain from acting. An obligation thus imposes on the obligor a duty to perform, and simultaneously creates a corresponding right to demand performance by the obligee to whom performance is to be tendered.

## Van Eeden v Minister of Safety & Security

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In Van Eeden v. Minister of Safety and Security (Women's Legal Centre Trust, as Amicus Curiae), an important case in the South African of law of delict as well as the country's criminal law, the appellant, Ghia Van Eeden, was assaulted, raped, and robbed by a known, dangerous criminal who had escaped from police custody. The court held that the state was obliged to protect individuals by taking active steps to prevent violations of the constitutional right to freedom and security of the person, inter alia by protecting everyone from violent crime. It was also obliged under international law to protect women specifically from violent crime.

In light of these imperatives, the court could no longer support the requirement of a special relationship between the plaintiff and the defendant for the...

Sea Harvest Corporation v Duncan Dock Cold Storage

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Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage (Pty) Ltd and Another is an important case in South African law of delict, particularly on the question of negligence. It was decided in the Supreme Court of Appeal in November 1999 with a judgment written by Judge of Appeal Douglas Scott.

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