law services course of the Public Accountants’ and Auditors’ Board. It is divided into four sections which comprise 28 chapters, each chapter covering a particular subject and each subject further sub divided.

All relevant information is covered comprehensively in the text and as such footnotes are not required. Section A deals with the South African legal system and an introduction to the science of law. Section B deals with general principles of the law of contract and covers, inter alia, an introduction to the law of contract, consensus, capacity to perform juristic acts, possibility of performance, formalities, terms of the contract, interpretation of the contract, breach of contract, remedies for breach of contract, and transfer and termination of personal rights. Section C mainly deals with specific contracts and covers areas such as sale, lease, insurance and credit agreements. Finally, Section D deals with specific aspects of commercial law such as labour law, intellectual property law and franchising, alternative dispute resolution, the law of agency, forms of business enterprise, the law of competition, security, instruments of payment, other methods of payment, the law of trusts, the law of insolvency and the law of administration of estates.

The number of chapters has not changed from that in the third edition but most of the topics have been reformulated. The section on the individual contract of employment has been replaced with the one on labour law, which now covers the law of collective bargaining and a new section on intellectual property law has been introduced, which links up with franchising. Both these topics now fall under section D – specific aspects of commercial law. The other chapters have been updated, and reference to, or discussion of, case law has been kept to a minimum as the book is aimed at students who are encountering law for the first time.

The text has been updated to provide for the changes brought about by, among others, the Employment Equity Act 55 of 1998, the Basic Conditions of Employment Act 75 of 1997, the Competition Act 89 of 1998, the Long term Insurance Act 52 of 1998, the Short term Insurance Act 53 of 1998 and the Rental Housing Act 50 of 1999. All the relevant legislation and amendments up to June 2000 have been included even though some are about to be changed again.

This edition is an improvement on the previous one and the target market should find it very accessible.

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CASE BOOK ON THE LAW OF DELICT
Neethling J, Potgieter JM and Scott TJ
Juta Co Ltd 2000 15pp and 970 soft cover, 3rd ed

Once more a new edition of Neethling, Potgieter and Scott’s Case book on the law of delict is to be welcomed. This third edition is a much more expanded volume than its predecessor although, taking into account the pace and volume of development in this area of the law, the authors are to be commended for keeping the size of the book within manageable proportions, especially as the work is intended to be an introduction to the law of delict for students. This work still remains one of the leading case books on the law of delict available on the South African market.

Since the last edition appeared in 1995 (which considered cases reported up to October 1994), there have been great developments in case law in all areas of the law of delict and the authors
have managed to capture the most important of these decisions. In all, 21 new decisions have been included in this edition while 17 cases which were included in the second edition have been left out.

The book retains its original user friendly character with a summary of facts at the beginning of each case and a summary of the main issues raised and reasons for the decision of the case at the end. This, of course, is of great assistance to students not only in giving them a simplified version of the facts, but also in supplying them with the background against which a decision is taken in those instances where the facts do not appear in the excerpt of the judgment.

Case book on the law of delict consists of a preface, a detailed table of contents, an alphabetical list of cases, a list of authorities cited and 11 headings or topics covered (these topics are not called chapters). All the topics dealt with, except the topic entitled ‘Conduct’ – which has been added in this new edition – were contained in the last edition. The topics covered are: Introduction to the law of delict; Wrongfulness; Fault (and contributory fault); Causation; Damage; Delictual remedies; Joint wrongdoers; Specific forms of damnum iniuria datum; Specific forms of iniuria; and Forms of liability without fault. The case book is intended to be used in conjunction with Neethling, Potgieter and Visser’s Law of delict (1999) to which constant reference of relevant pages is made in the note at the end of each case.

While it is not possible to mention, let alone discuss, the various new cases that have been included in the new edition, some of the decisions deserve mention. Thus under the topic entitled ‘Conduct’ the authors have included the case of Molefe v Mahaeng 1991 (1) SA 562 (SCA) which deals with defence of automatism and the question of onus of proof in running down cases in which the court held that the onus is always on the plaintiff who has to discharge it on a balance of probability. On the topic ‘Wrongfulness’ some four new cases have been added to the materials, all of which were decided between 1994 and 1999. Two of these cases make a good contrast on the question of liability for an omission. The first of these is Graham v Cape Metropolitan Council 1999 (3) SA 356 (C) in which the defendants were held liable for their failure to close or give effective warning to the public about the danger and risk of rockfalls and mudslides on a road for which they had control and responsibility for main tenance. The second case is Cape Town Municipality v Butters 1996 (1) SA 473 (C) which raised the question whether the Cape Town Municipality was negligent in failing to erect barriers to separate a parking area which was constructed very close to the canal and the canal itself. The respondent was injured when he fell into the canal as he tried to manoeuvre his way between the canal and his car. The court held that the appellant was not negligent since it had done all that was required of it by the law and the appeal succeeded.

Under the topic ‘Damage’ the authors have added one important decision, namely Collins v Administrator, Cape 1995 (4) SA 73 (C) which involved a claim for damages following an accident in a provincial hospital when a tube supplying oxygen to the plaintiff’s daughter was negligently disconnected by the hospital staff with the consequent that she suffered irreversible brain damage and was reduced to a ‘vegetable’ state. On the issue of damages, Scott J held that the functional approach should be applied to the issue of awarding compensation for pain and suffering, loss of amenities of life and diminished life expectancy to persons in
the ‘cabbage’ cases. The learned judge agreed with what he understood to be the position in England, namely, that

since an unconscious person is spared pain and suffering, he or she will not qualify for damages under this head. Similarly, because he or she is spared the anguish which may result from the knowledge of what in life has been lost or from the knowledge that life has been shortened, he or she will also not be entitled to damages in respect of this subjective element of the loss of amenities of life.

However, the position in South Africa was that in two cases, Gerke NO v Parity Insurance Co Ltd 1966 (3) SA 484 (W) and Reyneke v Mutual Federal Insurance Co Ltd 1991 (unreported) compensation had been awarded in situations where the plaintiff was in an unconscious or ‘vegetative’ state. Scott J disagreed with the view taken by Ludorf J in the Gerke case in which the latter judge, relying on English law, had held that since unawareness (or unconsciousness) was not a disqualification for a claim for loss of earnings, it should not be a disqualification for a claim for loss of amenities of life as the latter had been classified with a claim for patrimonial loss. In Scott J’s view, it did not follow at all that simply because awareness is not a requirement for a claim for loss of earnings, it should also not be required for a claim for loss of amenities of life; the former is a claim of a pecuniary nature and the latter of a non pecuniary nature, the two claims are thus different from each other. Unlike in English law where a claim for loss of expectation of life is transmissible, in South African law a claim for loss of expectation of life is not transmissible; and in any case, in the end it is only the heirs of the unconscious plain tiff who would get the benefit. However, Scott J acknowledged that there was considerable difference of judicial opinion on the subject and that there was need for review. No doubt, this decision will be watched with great interest since it marks a fundamental departure from precedent and, I dare say, social expectations.

Under the topic ‘Specific forms of damnum inuiria datum’, the authors have included six new cases. One of these cases is Barnard v Santam Bpk 1999 (1) SA 202 (SCA) which involved the question whether the plaintiff could recover damages for serious nervous shock and resulting psychic trauma and grief upon hearing of the death of her young son in a motor vehicle accident. The claim was based on the negligence of the driver of the vehicle insured by the defendants. The court was satisfied that the shock and psychic trauma resulting from the plaintiff’s hearing of the death of her son and the consequences thereof constituted recoverable damage. The court was not, however, prepared to accept that the plaintiff’s grief as a result of the loss of her son legally constituted actionable damage. As the authors correctly point out in their note, the decision seems to suggest, inter alia, that mere grief or emotional sorrow is not considered to be a psychiatric injury which constitutes legally recoverable damage. However, damages resulting from emotional shock, which is reasonably foreseeable, and provided there is a legal causative relation between the wrongdoer’s act and the emotional shock, are recoverable.

Another interesting case under the same topic is Minister of Law and Order v Kadir 1995 (1) SA 303 (A) which was an appeal against the decision of Con radie J in Kadir v minister of Law and Order 1992 (3) SA 737 (C) who, in the court a quo, had given judgement in favour of the plaintiff in a claim brought
against the Minister on the grounds that after he, the plaintiff, had been involved in an accident as result of the wrongful act of the other car, the two police officers who came onto the scene of the accident failed to take down the registration number of the other vehicle or the identity of the driver. As a result of the non availability of these particulars, the plaintiff could not institute a delictual claim against the driver of the other vehicle. The defendant’s (now the appellant) exception that the pleadings revealed no cause of action failed in the court a quo, but succeeded on appeal. Hefer JA, held that the facts alleged in the particulars of claim did not prima facie support the existence of a legal duty on the police towards the plaintiff. Even assuming that the two police officers did not properly perform their duty to investigate crimes in terms of the Police Act by failing to record relevant information, their omission did not constitute a breach of duty owed under the Act to the plaintiff. The police are agents employed by the state for maintenance of law and order, and prevention, detection and investigation of crime. Even though in the course of the performance of their duties its members often collect information relevant to issues in civil cases, the aim of their investigation is obviously not to provide the parties to such proceedings with useful information; nor does a prospective litigant have the right to demand a police investigation for the sole purpose of providing him with evidence. The fact of the matter is that whereas parties or prospective parties to civil litigation often make use of information gathered by the police, they must make do with whatever the police have available and cannot insist on anything better. The authors of the case book warmly welcome the decision of the Appellate Division arguing that no general legal duty exists to prevent pure economic loss and that each case must therefore be decided on its own facts. This is a tough decision, though undoubtedly sound in law. In the practical world of insurance claims, insurance companies invariably insist on a ‘police case number’ before they will process a claim and the police have often obliged. Kadir’s case says the police are under no obligation to provide such information. What are the legal convictions of the community in such cases, if any do exist at all?

Under the topic ‘Specific forms of iniuria’ the authors have included two decisions, both of which involve the media. The more important of these is the case of National Media Ltd v Bogoshi 1998 (4) SA 1196 (SCA) which was an appeal against the decision of Eloff JP in Bogoshi v National Media Ltd and Others 1996 (3) SA 78 (W) in which the judge had refused to grant an application to amend the plea of the defendants in an action arising from the publication of a series of allegedly defamatory articles in the City Press newspaper between the period 17 November 1991 and 29 May 1994. The original defence was that the articles were substantially true and had been published for the public benefit. In their application for amendment the defendants sought to cater for their apprehension that they might not be able to establish the truth of the statements contained in the articles. The first proposed amendment to their defence was that the third defendant, that is the distributor, did not intend to defame the plaintiff; that it was unaware of the alleged defamatory articles and did not know that the articles of that kind were likely to appear in the newspaper, and that it was not negligent. The essence of the third proposed defence was that the publication of the articles was lawful and protected under the freedom of speech and expression clause of the interim Constitution of the Republic of South Africa Act 200 of 1993.
In dealing with the third proposed defence, Hefer JA, first considered whether the decision of the Appellate Division in Pakendorf en Andere v De Flamingh 1982 (3) SA 146 (A) in which that Court held that newspaper owners, publishers, editors as well as printers were strictly liable for defamation, was correct. Pakendorf’s decision was, in fact, a culmination of a series of decisions starting with Suid Afrikaanse Uitsaaikor perasie v O’Mally 1977 (3) SA 39 (A) in which it was decided that owners, editors, publishers and printers of newspapers ought to be strictly liable for defamation in accordance with the law in England where liability arises from publication of defamatory material and not from any particular intention, and also where members of the press are liable for defamation of which they are not aware. After reviewing the law in South Africa as well as in other jurisdictions, particularly Canada and New Zealand, Hefer JA came to the conclusion that the Court of Appeal took the wrong decision in Pakendorf’s case in respect of the policy adopted in a case such as this. He said

If we recognise, as we should, the democratic imperative that the common good is best served by the free flow of information and the task of the media in the process, it must be clear that strict liability cannot be defended and should have been rejected in Pakendorf ... In my judgment the decision in Pakendorf must be overruled. I am, with respect, convinced that it was clearly wrong.

Hefer JA indicated that a number of academic writers in South Africa had criticised the decision in Pakendorf (although some had supported it) and strict liability had been rejected by the Supreme Court of the United States of America, the German Federal Constituional Court, the European Court of Human Rights, Courts in the Netherlands, the English Court of Appeal, the High Court of Australia and the High Court of New Zealand.

Having thus overcome the policy stumbling block posed by Pakendorf, Hefer JA considered the relevance of justification in the context of the case before him which formed the basis of the third defence. Again here, Hefer JA, referred to Australian and English as well as local decisions. In Australia, the High Court had extended the concept of qualified privilege to cover publications to the general public of untrue defamatory material in the field of political discussion provided there was reasonableness of conduct. The English Court of Appeal had, however, developed a three stage test, namely, whether the publisher was under a legal, moral or social duty to publish the material. Secondly, whether those to whom he published the material had an interest in receiving it and, thirdly, whether the nature, status and source of the material and circumstances of publication were such that the publication should be protected in the public interest in the absence of malice. Against the background of these approaches, the learned judge concluded that the solution to the problem in England, Australia and the Netherlands seemed to him to be entirely suitable and acceptable in South Africa and that, in his judgement, South Africa must adopt this approach by stating that the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time. In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. What will
also figure prominently is the nature of the information on which the allegations were based and the reliability of their source, as well as the steps taken to verify the information. Ultimately, therefore, there can be no justification for the publication of untruths and members of the press should not be left with the impression that they have a licence to lower standards of care which must be observed before defamatory matter is published in a newspaper. The amended pleas of the third and fourth defendants were accordingly allowed.

The Bogoshi case is an important landmark decision in the law of defamation. Whether South Africa should confine the defence of qualified privilege to cover publications of untrue defamatory material to the field of political discussion provided there is reasonableness of conduct as the Australian High Court appears to confine it, or whether South Africa should extend it to situations where there is a legal, moral or social duty to publish the material to those who have an interest to receive it as the English Court of Appeal appears to extend it is still uncertain. The case establishes that liability will not attach for publication of untrue defamatory matter if, upon consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts. The English approach would seem to open the net somewhat very wide while the Australian approach restricts the defence to political discussions. Which way South Africa? The Bogoshi case should engage both students, lecturers and practitioners in lively debate regarding liability of the media for publication of untruthful defamatory matter.

In Case book on the law of delict, the authors have selected only the most relevant cases that both lecturers and students should find most instructive in this course. It is a work that every student embarking on the study of the law of delict should have for easy reference to complement any standard textbook on the law of delict.

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