

## Principles of Delictual Liability in Native Law

1. The nature of a delict
2. Historical -
  - i. Delictual liability in Primitive Law in general
  - ii. Delictual liability in Native Law as dealt with by or in
    - (a) Anthropological monographs
    - (b) Commission Reports
    - (c) Law Reports + Textbooks.
3. Principles of liability regarding injuries causing patrimonial loss.
  1. What is meant by Patrimonial loss
  2. Act of Commission
  3. Wrongful nature of the Act.
  4. Wrongful intent
  5. Negligence
  6. The Duty of Care
  7. Extent of Duty to take care
  8. Proof of Negligence.
  9. Res ipsa loquens?
4. Principles of liability regarding injuries not causing Patrimonial loss.
  1. Aggression upon the Person, Dignity or Reputation
  2. Act of Commission
  3. Wrongful Act.
  4. Animus Injurians
  5. Acte Injuriosum denunciations aboletus.
5. General Defence.
  1. Negligence of the Plaintiff: Contributory Negligence
  2. Negligence of a Third Party
  3. Volenti non fit injuria
  4. Necessity
  5. Statutory Authority
6. Parties to Delict.
  1. The Chief of the public functionaries
  2. Husband + Wife
  3. Kinsmen + Associates of Kinsmen - (a) male, (b) female, (c) single (d) married
  4. " + Strangers
  5. Principal & Agent
  6. Partners
  7. Master & Servant - Course of Employment.
  8. Joint Wrongdoers

## 7. Remedies for Wrongs

1. Equiv. judicial remedies
2. Judicial Remedies
3. Damages
4. The Measure of Damages
5. Restitution of Damages
6. Injunction
7. Survival of Actions
8. Cession of Actions: Privity
9. Limitation of Actions: Prescription
10. Civil & Criminal Prosecution.

## Specific Wrongs

1. Wrongs against the person  
Death; Assault; Bodily Harm; (false imprisonment)
2. Wrongs against Chastity & the marriage relationship  
Seduction; Adultery; Abduction; Enticement; Harboursing;
3. Wrong against Reputation  
Defamation: Defamation; essential of liability; Defamatory nature of statement  
Reparation of a corporation; Defamation of a deceased person; Innuendo;  
Interpretation of Defamatory Statements; Reference to Plaintiff; Publication  
Defence: justification; Privilege, (absolute & qualified); Fair Comment;  
Miscellaneous Defences.
4. Liability for Non-defamatory Statements
  - i. Fraudulent misrepresentation - Accedit
  - ii. Injurious falsehood
  - iii. Passing off.
  - iv. Liability for negligent statements
5. Wrongs against Property  
Trespass; Nuisance; Disturbance of Servitudes; Other injuries to property.
6. Liability for Dangerous Property  
Land & Buildings; Movable; Animals
7. Abuse of Legal Procedure  
Malicious Prosecution & other malicious proceedings; Maintenance & Champerty
8. Interference with Contractual or Business Relations  
Inducement of Breach of Contract; Interference with Trade, Business or Employment
9. Breach of Statutory Duties; Actions for damages founded on breach of statutory duty  
Injunction; Publication  
Breach of statutory duty as source of negligence.

The legal status of an individual in Native Law depends upon a number of factors. Among these may be mentioned: -

- 1. Age. The age of an individual played an important part in determining his rights and duties. The rights and duties of an adult differed from those of an infant or of an adolescent. The individual in his life passed through different stages and

# THE LAW OF DELICTS IN NATIVE LAW

## Bibliography

### General Works on Primitive Law

- Malinowski : *Crime & Customs in Savage Society*  
 Malinowski : *Introduction to Hogbin's "Law & Order in Polynesia"*  
 Radcliffe-Brown : *Primitive Law (Ency. of Social Science)*  
 Diamond, A.S. : *Primitive Law*  
 Vinogradoff : *Historical Jurisprudence*  
 Holdhouse : *"Morals in Evolution"*  
 Westermarck : *Origin & Development of Moral Ideas*  
 Maine : *Ancient Law*  
 Huxford : *Primitive Law*

### Special Works on Native Law

- Whitfield : *S. A. Native Law*  
 Staffard : *Native Law as practiced in Natal*  
 Lewin : *An Outline of Native Law*  
 Harries : *Kafre Law & Custom*  
 Schepers : *Tramane Law & Custom*  
 Ramsay : *Trompa Law*  
 Blaauw : *Native Law & Customs*  
 Blaauw : *The Natal Code of Native Law*

### Reports

- Natives and Customs Commission of 1882  
 Natal Commission of 1852  
 Cape Commission on Bushveldt Law 1873  
 Cape Commission on Law & Customs 1910

### Law Reports

- Reports of the Native High Court, Natal  
 Reports of the Transvaal Territories Native Appeal Court  
 Reports of Natal Appeal Court (Natal & Transvaal)  
 Reports of Native Appeal Court (Cape & S. S.)

### S. A. Law

1. Nathan : *Law of Torts*
2. McManis : *Law of Delict*
3. de Villiers : *Law of Delict*
4. Salmon : *Jurisprudence*

### Monographs

- Jones : *Life of a S. A. Tribe*  
 Brown : *Among the Bushveldt Nomads*  
 Schepers : *Armed Life in an African Tribe*  
 Hunter : *Reaction to Injustice*  
 Stuyt : *The Bushveldt*  
 Kuper : *Social System of the Zulus*

### Journals

- Bantu Studies*  
*African Studies*

# Cases on DELICTS IN NATIVE LAW

(C & O) 1935.

1. Anoch Sogoni *and ano.* vs Maggadaza, p. 18 Adultery
2. Kufele Yamofu vs Zwelindaba Mleselo *and ano.* p. 25 Adultery
3. Koli Mgadeni vs Nkowane Egubenhomo. p. 54 Abduction
4. Maki Mziba vs Sekake Mgqoboka. p. 58 Engagement
5. Lupondo Mbulwana vs Madondile Nggindeni, p. 68 Adultery
6. Edwell Kesa vs Saul + Dubula Ndaba, p. 64 Engagement.

C & O 1936

1. Edda Makuto vs Johannes Fihla, p. 14 Seduction
2. Dasoyi Ndeve vs Ntshokolo Nguzo p. 20 Adultery
3. Mshacki Mlakalaka vs Philemon Bose p. 22 Engagement
4. Stephen Kumbani vs Zibisi Jaji + J. Zebisi p. 25 Arrest + Imprisonment
5. Xego Ndepane vs Alexander Luzifo p. 34 Engagement.
6. Ntombula Exarisa vs Sizokwana Maggoza p. 36 Pauperism
7. D. Magadla vs Isaac Hama p. 56 Household liability.
8. Nkhele Mgqantonyana vs Magobonyo Kijibi p. 64 Adultery
9. M. Mkupeni vs M. Nomungunya + Others p. 77 Abduction Seduction.
10. Macebo Gxumisa vs Sidubedube + Mgquomile p. 80 Adultery
11. Segxamama Nggindi vs Siffith Gxera p. 82 Assault.
12. Nomtobe + Nombhlangeni vs Mzumba Mblatijwa p. 83 Adultery
13. Mabruku Magutu vs Mgxulwa Sanicizi p. 86 Adultery
14. Zekani Boga vs Ntlenenengo Nggwangwana + Others p. 91 Master's liability
15. Siji Bida vs Wilson Njomone p. 93 Assault.
16. Daniso Mlangana vs Mnyofu *and ano.* p. 100 Adultery
17. Mbaliso + Mbaliso vs Boga Mtshale p. 118 Adultery
18. Nyani Matimae vs Javu Maloti p. 121 Seduction
19. N. Ntsham vs M. Ntsham + Eobuzembe p. 128 Household liability.

CASES ON DELICTS IN NATIVE LAW

(C 20) 1937.

- 1. Mgokela Arosi vs Helani Manyakanyaka, p. 137 *Wrongful Expulsion*
- 2. Monaso Septembe vs Zacharia Mphahlele p. 138 *Engagement*
- 3. Sepango Nabileya vs Mphentso Coma, p. 149 *Defamation*
- 4. Magwanya Qunta vs Khatlala Tlatyisi p. 157 *Seduction*
- 5. Mafuta Mlate vs Leshiba Mphetwana p. 161 *Perjury*
- 6. Keke & Samuel Mkwane vs Jane & Richard Bangani, p. 185 *Seduction*
- 7. Mphambani Tshamba vs Kishwephe Kondlo, p. 190 *Trespass*
- 8. Maggereie vs Swelindawa Benere p. 202 *Adultery*
- 9. Gqaza Fatuse vs Silengotywa Mankanti p. 205 *Spoliation*
- 10. Koro Bekhwe vs Komeni Tshwe p. 210 *Adultery*
- 11. Mphletywa Mngeni vs Motshwesi Kufala p. 212 *Assault*
- 12. Magogwana Thomas & Mthlangane Beniso & Anso, p. 214 *Adultery*
- 13. Ntshalala Maboore vs Sezakele Buhwani p. 225 *Death*
- 14. Mantsundu Mngana vs Maphiso Ndubongo p. 226 *Trespass*

C 20 1938

- 1. Zachariah Mphahlele vs Mphahlele Ngobeni, p. 8 *Trespass*
- 2. Aaron Ndlanga vs Mmama Mphahlele, p. 12 *Engagement*
- 3. Robert Maphahlele vs William Mphahlele, p. 23 *Perjury*
- 4. Mthlangane Mphahlele vs Mthlangane Mphahlele, p. 39 *Adultery*
- 5. Daniel Mthlangane vs Mthlangane Mphahlele, p. 46 *Adultery*
- 6. Lonke Mthlangane vs Ngwenya Tutu p. 59 *Adultery*
- 7. Tshlangane & Mthlangane vs Ngwenya Tutu, p. 61 *Adultery*
- 8. Gertrude Ncube vs Sina Lelona, p. 68 *Defamation*
- 9. Gqweta Mphahlele vs Mthlangane Mphahlele p. 77 *Adultery*
- 10. Joly Gqato & Mphahlele Mphahlele vs Mthlangane Mphahlele, p. 80 *Adultery*
- 11. Gama Daba vs Alfred Mphahlele p. 83 *Engagement*
- 12. Mthlangane Mphahlele & Mthlangane Mphahlele vs Mthlangane Mphahlele, p. 87 *Death*
- 13. Mthlangane Mphahlele vs Mthlangane Mphahlele p. 90 *Adultery*
- 14. John Mthlangane vs Mthlangane Mphahlele & Anso, p. 94 *Seduction*
- 15. Howard Mthlangane vs Mthlangane Mphahlele & Anso, p. 96 *Seduction*

16. Abraham Ntekeio vs Walaza & Ngwetofa Vanga, p. 1001 Seduction

# CASES ON DELICTS IN NATIVE LAW

(C & O) 1939.

1. Gwegwe Mpotulo vs Toli Kdzantse, p. 1. Defamation
2. Mtemela Jaca vs Mlayicike Senana, p. 12. Adultery
3. Masenekalwa Smitisi vana vs Mkhosho Kubija, p. 14 Adultery
4. Qokoyi Mbanga vs Bakaqana Sekolake, p. 31 Adultery
5. Tyuka Xanes vs Mtonyana Tunge, p. 36 Adultery
6. Rasha Yana vs Mkonzo Tshwele p. 37 Adultery
7. Ntshikili Gagilanga vs Bodwana Kosi p. 39 Seduction
8. Panjani Dula vs Gwuyate Mcamyana p. 46 Adultery
9. Abraham Ngolombane vs Keenati Ngolombane p. 49 Adultery
10. Hobe Mkhatabi vs Macayisa Mjwacu & Others p. 54 Assault
11. Jhu Pika vs M Kanyana Kapase p. 67 Adultery
12. Gebom Mkhungana & Others vs Sekolake Dumeke p. 68 Injury
13. Selo Mowitshi vs Mponia Madubela, p. 73 Adultery
14. Seta Motekwane vs Priscilla Motekwane p. 81 Seduction
15. Pere Ngxabalaza vs Ntsoholo Mjwane p. 96. Seduction
16. Dandoshi Matinisi vs Mhikati Sawuka p. 101 Seduction
17. Goodwin Mnyole vs Henry Skanyana p. 105 Adultery
18. Marate Mollong vs Maki Mhoseneng p. 127 Seduction

C & O 1940

1. Ntanganeni & Madlani Toleni vs Bwana Besutu p. 1 Adultery
2. Lunda Mayabli vs Joseph Nyane, p. 5. Defamation
3. Pufuyiza Nkentshu & Others vs Gonteni Diba p. 8 Assault.
4. Mthangana Kholakala vs Mfili Kholakala p. 12 Defamation.
5. T. O. Troali vs Khoyane Lebanya p. 22. Seduction
6. Mandumakase Toli vs Valiphetu Mabumba, p. 32 Spoliation
7. Sekatelo Mhutywa vs Melandela Mvungu p. 34 Impersonation
8. M. Bakete & Bekela vs Z. Gwondana p. 35 Adultery
9. Ngqunguza Ngxazana & Maki Halem p. 57 Seduction.



CASES ON DELICTS IN NATIVE LAW

(CJO) 1940.

1. Velebani Taleni vs Sampson Milla Mshulata p. 62 Seduction
2. Martha Mlagalla vs N. Gwabi P. Gwabi, p. 69 Seduction
3. Zekia Bolofo vs Albert Whitty p. 71 Seduction
4. Mkhlabeni Treweu vs Babasho Ngakala p. 72 Seduction
5. Mziki Mwinjehwa vs Takayo Seralo p. 77 Assault.
6. Duamile Dabiele vs S. Danga vs B. Danga p. 83 Seduction
7. J. Q. Matolo vs Anna Kakehile p. 104 Seduction.
8. Anodi Ndubumboni vs vs Johnson Luke p. 135 Assault.
9. Farant Nontonywa vs Stanford Mafoko p. 146 Adultery
10. Lethokong Miso vs Neo Remabele p. 149 Seduction
11. Moxunu Mafikata vs M. V. Mgweli p. 160 Adultery
12. Makosini Nontshaketshe vs S. Nomaqaputi p. 166 Adultery
13. Gananda Kamani vs Quntshule Segogo p. 167 Adultery
14. Jijini Mloda vs Roswell Soga p. 169 Negligence
15. Zachariah Seboto vs Sesma Muthi p. 174 Seduction

# CASES ON DELICTS IN NATIVE LAW

(C 10) 1941

1. Sekuntya Lobisini vs Pitiso Ngakumbi, p. 1. Seduction
2. Alfred Lema vs Solomon Lwele p. 3 Adultery
3. M. Tetyana vs D. N. Tetyana p. 12 Assault
4. Kimbili Diniso vs Mphunga Msila p. 14 Assault
5. K. Msimang vs S + M. Kutwana p. 25. Assault.
6. Mbezwa Ndezi vs Mkonile Gxonono p. 36 Seduction
7. Kolisile Maku vs Nancy Rangana p. 46 Seduction.
8. Lihlan Joffa vs Templeton Joffa p. 48 Seduction
9. Mzayifani Dyoldani vs Tyira Resu p. 72 Adultery
10. Nkewokwelo vs Melani Tonga p. 75 Engagement
11. Sezonga Ngantshelo vs N + M. Esdo p. 81 Seduction
12. Mgadalana vs Malala + M. Lirani p. 87 Adultery
13. H. Sayimani vs L. Segabo + S. Binza p. 94 Adultery
14. E. Skengana vs B. + M. Manyeka p. 106 Separation

C 10 1942

1. Redley Mkatshwa vs Daniel Tabalaga, p. 6. Seduction
2. Ambrose Nkengane vs Wycliff Ngalo p. 15. Negligence.
3. T. Nongwane vs S. + P. Maratshi p. 21 Seduction
4. N. Hagile vs M. + L. Solane p. 26 Adultery
5. S. Nongqayi vs M. + T. Mbose p. 34 Seduction
6. E. Kakaza vs S. Kakaza p. 36. Engagement.
7. M. Curayisa vs E. + D. Mkenyesira p. 41. Spoliation
8. A. Ntobongwana vs F. Mlauli p. 52. Seduction
9. M. Mambumbi vs M. Lobi p. 66 Infidelity
10. S. Malima vs Enoch Mkhahlo p. 73 Engagement.
11. Daniel Elephant vs Curron Masiza p. 75 Assault
12. G. Mphengisi vs S. Gwabe p. 78 Engagement
13. James Nchada vs Peter Mokoena, p. 80. Adultery
13. Manyi Zogaza vs Intle Vakuli p. 82 Infidelity

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C 50 1942

14. Z. Mditshwa & M. Mdukubwana vs M. Mkhutwana p. 87 Adultery
15. M. Tashe vs M. Mentantia p. 89 Trespass
16. M. Eonwe & S. Manyisa vs Magozo Mnduku, p. 90 Adultery
17. P. Davela vs S. Ntshobane, p. 91 Seduction
18. N. Mankwana vs N. Q. Sihwanya p. 101 Adultery
19. Suzatu Matanzima vs Xanyana Muboti p. 105 Assault.
20. Tujjo Nkublu vs Kona Mxatule p. 107 Seduction
21. B. Mchomakulu vs M. Jhepela p. 110 Engagement
22. Mbulah Sigangapi vs M. Mkomdweni, p. 113 Adultery
23. Sefu Mootshana vs M. Gusa p. 114 Defamation
24. N. Mdyongolo 000 vs N. Mdyongolo p. 121 Seduction
25. S. & J. Ntshole vs B. Lebata p. 125. Mkhutwana

C 50 1943.

1. D. Mchoto vs M. Mkonatle p. 7. Engagement.
2. L. Mgadi vs S. Nagwaza p. 14 Engagement.
3. C. Maphelaba vs M. Gacula p. 21 Adultery
4. Julius Phai vs Robert Cakata p. 23 Seduction
5. M. Manyisa vs B. Volovane & others p. 26. Death
6. S. Mbulu vs J. Mdebonosano. p. 29 Adultery
7. M. Nobabem vs N. Nwanca p. 32 Adultery
8. N. Mlekwa vs S. Mativone p. 36 Assault.
9. M. Maphelaba vs K. Lenata p. 49 Adultery
10. S. Mbulu vs Mokothe Mbulu p. 57 Adultery.
11. S. Mxabangeli vs E. Matini p. 57 Defamation

~~M. M. M. M.~~

CASES ON DEKETS IN NATIVE LAW

(C & O) 1944.

- 1. Anderson Fuzile vs Thomas Ntoko, p. 2. Adultery
- 2. Lifford Dikilili vs Tobriatshi Salaman, p. 19. Engagement.
- 3. Ntloleeni Saveleni vs Rky Moni, p. 31 Adultery
- 4. Nkwantwana Nomosa vs Muni Nyankoni, p. 48 Shikhatu
- 5. Mbonelili Sakati vs Skado Kumalo p. 54 Adultery
- 6. Mashia Dhlamini vs Pecanin Matibe, p. 69 Seduction
- 7. L. C. Yako vs R.M. Beyi p. 72 Seduction
- 8. O. Gwarabe vs B. & M. Mgijungwa p. 87 Seduction
- 9. N. Nqogwane vs O. Nqogwane p. 88 Engagement
- 10. Monda Mepiliba vs Sibutuntze kikobhwe, p. 101 Adultery
- 11. Cabot Skimpama vs Gush Guga & Mwa p. 102 Seduction

C & O 1945

- 1. Jasper Demans vs R.T. Mablote, p. 28, Seduction
- 2. J.O. Bani vs Sleanor Mvelase p. 33 Injury to Property
- 3. Khotywana Mngweneni vs Simeni kubisi, p. 36 Shikhatu
- 4. Mawongo Matolweni vs Faku Deweti p. 40 Adultery.
- 5. Percy Dana vs Queen Moko p. 44 Trespass
- 6. Mnyamizeli Qobo vs Mtombonyi Porwaga p. 45 Seduction
- 7. Wycliffe Ludidi vs John Nongena p. 59 Seduction
- 8. Mphetho Sandelo vs M. 2. Likotsi p. 60 Pauperies
- 9. Richard Mapolota vs Adolphus Gazi p. 61 Seduction
- 10. Jackson Nkosingane vs Sutinini Janga p. 75 Seduction
- 11. Tawuli Masasaga vs Mbiza Siputyana p. 76 Adultery
- 12. M. Mzayiqun vs Mabandla Mpehle p. 76 Adultery
- 13. Jam Khalata vs Legweta Roizim p. 113 Trespass
- 14. Gankana Moriso-Aho, vs Zulu Mshkatu p. 123 Seduction
- 15. Mkwentwe Solwe vs Sandlana Mnyuko p. 125 Adultery
- 16. K. V. Nkongze vs Willie Mnyeni p. 129 Seduction
- 17. Theophilus Mazeleni vs Bulata Tobogumya p. 130 Adultery

18. *Matanziso Njoko vs Mamana Mfengelwana, p. 132 Adultery*

Amount of Scholarships — £45.

Balance £5. 10

Peter Matthews ——— 12. 12. 6

Credit ——— 7. 2. 6

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(Cto) 1946

1. Jacob Morda vs Makosi Mijikela p. 3. Seduction
2. H. Muroso sano vs Ramoitsane Nkosa p. 14. Seduction
3. Daniel Leboma vs Agnes Ramokone p. 14 Seduction
4. Douglas Nzo vs Ndzima Lubisi p. 18 Adultery
5. Nkwankwana Mabenkomo vs Ngergabantu Sente sano
6. ~~Debrah Nggaka vs Dudley Kula~~ p. 59 Adultery
6. Debrah Nggaka vs Dudley Kula p. 71 Seduction
7. William Boyana vs Butana Dyanini p. 74 Seduction

## Nature of Damages in Delict

Layman: Nature and Extent p. 140

Steyn vs Munnick, 2 N.A.C. 22

Daniel vs Jacobs, 2 N.A.C. 29

Balukhuma vs Nkobungeli, 1932 N.A.C. (C+O) 43.

## Negligence or Intention in Delict

See

Macneon's Compendium, pp. 70, 116, 117

Daza vs Ngetchoko, 2 N.A.C. 101

Ndungane vs Ngalo, 1942 N.A.C. (C+O) 15.

Rasthu vs Rasthu, 1948 N.A.C. (C+O)

Semangwa vs Peter, 6 N.A.C.

Shanema vs Seena, 6 N.A.C.

### For Accidental in Delict

See Daza vs Ngetchoko, 2 N.A.C. 101.

" Nanyela vs Sobabula, 3 N.A.C. 202

" Rasthu vs Rasthu, 1948 N.A.C. (C+O)

### Finer's Action in Delict

Trouli vs Lebanga, 1940 N.A.C. (C+O) 22.



## NATURE OF DELICT

1. A legal wrong is a breach of the law for which some action may be taken against the offender
2. Legal Wrongs may be of three kinds
  - (a) Crimes - wrongs against the community - violations of laws intended primarily for the protection of the community as a whole
  - (b) <sup>Civil</sup> ~~Delicts~~ Wrongs - wrongs against the individual - violations of laws intended primarily for the protection of the rights of individuals is distinct from the community
3. Civil Wrongs may themselves be divided into