Business Law

I CAN MAKE IT LEGAL!

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Module 1 - Law of delict

- What is a Delict?
  When actions cause harm to another.

- It can be an act (swing club into another’s face)

- Or it can be an omission - a failure to act.
  (not repairing faulty pipe)

- Or it can be by insulting/ invading privacy

- 2 types of delict - **Aquilian action** (physical damages) and
  **Actio iniuriarum** (personality damages)

  But both types generally require:

  - A) ACT/OMISSION
  - B) WRONGFUL
  - C) FAULT
  - D) CAUSATION
  - E) DAMAGES
1) Aquilian action

- **A) CONDUCT:**
  - Force your will, or direct your will
  - Sneezing? Sleepwalking?
  - Must have acted or failed to act....

- **Omissions are only Delictual if:**
  - i) prior conduct that causes danger (unlock the lions’ cage);
  - ii) there is a legal duty to act; (don’t unlock the lions’ cage)
  - iii) can an agreement between parties be inferred; and
  - iv) contractual assumption for safety of another (parents)
1) Aquilian action

- B) Wrongful

...that was wrongful.... Did it cause harm?

Driving a driver to another’s face, crashing your car into another... etc
1) AQUILIAN ACTION

- C) fault

- Blameworthiness

- Intention (I wanted to bash that Ford)

- Negligence (I didn't pay attention to the road)

Negligence requires the reasonable person test:

1. a reasonable person would have foreseen the consequences;
2. a reasonable person would have taken steps to prevent that harm from occurring; and
3. the person still failed to take those steps.
1) AQUILIAN ACTION

- **D) Causation**

- If I do this, this will occur.

- If this happens, then that will occur
1) AQUILIAN ACTION

- E) Damages

- Put me back to the situation I was in before accident; or

- Restore the value of my car before car accident.

- Damages are on definite figures

- Medical expenses (present and future), loss of income (present and future), pain and suffering,
1) AQUILIAN ACTION

Defences for this type of delict:

1. contributory negligence
2. private defence;
3. consent
   - duels and sports
4. statutory authority- such as police using force to pin you down.
2) **Actio iniuriarum**

- Feelings or reputation are damaged

1) **conduct** - direct my words

2) **wrongful** - to hurt another

3) **fault** - **INTENTIONALLY**;

4) **Causation** - link words to damage

4) **Damages** – reputation is ruined
2) **Actio iniuriarum**

- Depends on what is infringed:
  - Invasion of privacy vs. Defamation?

**DEFENCES TO ACTIO INJURIARUM:**

- Truth, public benefit;
- Fair comment;
- Privilege? Absolute v qualified privilege

- MALICE? – never protected by privilege,
Module 2 – Business enterprise and taxations

TYPES OF BUSINESS:

1. sole proprietorship
2. Partnership
3. company
4. close corporation
5. others such as business trust, body corporate etc
sole proprietorship

- You are the business

- You purchase and sell in your own name and under a business name

- "T/A"?

- Not separate legal entity - you are and the business is you.

Profits and losses are yours
partnership

- Two or more people join to make a profit
- What percentage of the profit is shared?
- Requirements (need to be agreed to):
  
  a) valid partnership agreement;
  b) between 2 - 20 people;
  c) all must contribute;
  d) intend to make a profit; and
  e) agree to share profits and losses
COMPANIES

- The advantage of legal separateness?
  - A) obligations and rights in its own name.
  - B) profits are in form of dividends

- Juristic person?
- Private vs public vs NGO/ NPO

- Shareholders v members

- Peaking the corporate veil
- Fiduciary duty

- Surety?
Taxes

1. Income tax
2. Capital gains tax
3. Value added tax
4. Provisional tax
5. Donations tax
6. Custom and excise
7. Transfer duty
8. Pay as you earn
9. Skills development
10. Unemployment insurance
Module 3 Property and security law

- Movable v immovable v immaterial property?

- All are things/ can be possessed by someone

legal subject can have:

- ownership;
- possession;
- limited real rights;
General concepts of property law

- Legal subject - person / juristic
- Object / thing / property
- Right / property right
- remedy
What is “a thing”

- Corporeal/tangible
- External to human
- Independent
- Subject to judicial control
- For whom it is useful and of value
Types of things

- **A) negotiable / commercial things**
  - i) owned things;
  - ii) things that are not owned yet-
  - iii) discarded things- things tossed away without intention to own
  - iv) lost things but not discarded- intention to own is still present
Types of things

- B) non negotiable:
  - Cant be owned;

  - A) air, water- available to all
  
    - B) public owned- like roads or prisons
Types of things

- Particular v composite things?

- Principle thing: exists independently;

- Accessory thing: loses its independence when added to principle thing (brick to a house house)

- Auxiliary thing- is independent but is useless without the principal thing (key to the house or car)

- Fruits?

  - Civil fruits v natural fruits?
Types of things

- Movable- anything that is not land or building
- Immovable- land and buildings
- But there are more differences in law between the two
Types of things

- **Fungible** - belongs to a class and genus (cash)

- **Non-fungible** - have individual characteristics and are irreplaceable (paintings)

- **Consumable** – are used up by use (food, wine, fuel) – you do not replace the same lunchbar

- **Non consumable** - essentially maintained even if normal wear and tear - (house or cars)

- **Divisible thing** - the item can be divided and keep it characteristic and price (grain)

- **Indivisible things** - cannot be divided without losing value (painting)
Real and personal rights

- **Real right** - your right to ownership (car, house, golf club)

- **Limited real right** - you do not own, but you can use the property via agreement or law

- **Personal rights** - contract rights such as a lease or lien or even copyright

- These are all rights and they belong to a person - thus they are property of the person
Original acquisition

- **Appropriation**: unilaterally decide to own something that no one owns.

- **Accession**: 2 corporeal things mix to make a new thing - the owner of the principal thing is owner of new thing.

- **Manufacture**: take someone else’s things and manufacture something completely new. (without permission)

- **Comixtio or confusio**: whoever owned the principle etc.

- **Fruits**: if still hanging - accessory things and belong to principle thing.

- **Expropriation**: ownership goes to government

- **Prescription?**
Derivative acquisition

- Cooperation of previous owner is required.
- Nemo plus iuris rule?
- Intention to deliver and receive for movable,
- Registration for immovables
Ownership

- Ownership means you have certain entitlements

- Control: physically control thing

- Use - to use it for a benefit

- Encumber - to grant limited real rights

- Alienate - to transfer to another

- Vindicate – to claim from another person
Protection of ownership rights

1) **Real remedies** - restore physical control

2) **Delictual remedies** - claim compensation or damages;

3) **Enrichment remedies** - compensate the owner for his loss.
Intellectual property

- Patent
- Design registration
- Trade mark
- Copyright
- ASA code
Security

- Also called guarantees:
  - Performance security – company/ cc
  - Preferment claim- real security
  - Mortgage/ notarial bonds- registered for benefit of third party
  - Pledge- movables- exists until repossession, may be sold, used
  - Notarial bond over movables-
  - lien
  - Cession- personal / creditors rights may be given to another.
Suretyship

- Suretyship is co-principal debtor
- If debtor don't pay- claim from surety
- Writing
- What ever defence
- Benefit of excussion- first claim from debtor
- Benefit of division- claim pro rata share
Unlawful competition under the common Law

1. **Passing off**
   - one person disguises goods so that they can be passed off as a competitor.
   - Falsely selling goods made by another;
   - Using or imitating trade mark of another, get up or design;
   - Allowing the public to believe that it's the same business; and
   - Using another’s trade name

2. **Trade Secrets**
   - Kept confidential;
   - Info received by employee for employer;
   - Info received during scope and duties;
   - Info = stolen documents
   - Info = made through care and skill despite public knowledge;
Competition act 1998

1) **restrictive horizontal practices**
   vs
   **restrictive vertical practices**
   - Defence – prove technological efficiency or any other pro-competitive gain.

2) **dominant positions**
   - Change prices unreasonably
   - Refuse competitor use of necessary facility;
     Prevents competitors from growing

3) **Mergers**
Internet law

- Electronic Communications and Transactions act no. 25
  - Deals with digital commerce – no common law;
  - Applies to online activity;
  - Doesn’t exclude other law;
  - Doesn’t apply to sale of immovables, wills, long term lease
Electronic Communications and Transactions act no. 25 (ECTA)

- Requirements for data message:
  - Law now recognises data messages, transactions, signatories etc- same as if it was on paper.
  - Reasonably noticeable and readily available.
  - Will be legally valid even if law says agreement must be on paper.
  - Where no signature is required- intention of party is enough
    - electronic signature (writing your name in allocated blocks)
    - Click wrap- click to accept
    - Web wrap- hyperlink

- Check out
Important policies of the ECTA

- Certain information must be provided
- Review, correction or withdrawal form a transaction Safe and secure payment system
- Cooling off period – consumer may cancel within 7 days of transaction or receipt of goods
- Unsolicited goods, services or communications or spam are highly regulated
The Consumer Protection Act (CPA)

- Right to equality & protection against discrimination
- Right to privacy
- Right to choose
- Right to disclosure and information
- Right to fair and responsible marketing
- Right to fair and honest dealings
- Right to fair, just and reasonable terms and conditions
- Right to fair value, good quality and safety
Exemptions from Cpa

- Transactions with the Government
- Transactions with juristic persons (including partnerships and trusts) whose asset value or annual income exceeds R3 million or threshold set by minister
- Credit agreements covered by the National Credit Act
- Employment Contracts
- Collective bargaining agreements
- Agreements Exempted by the Minister