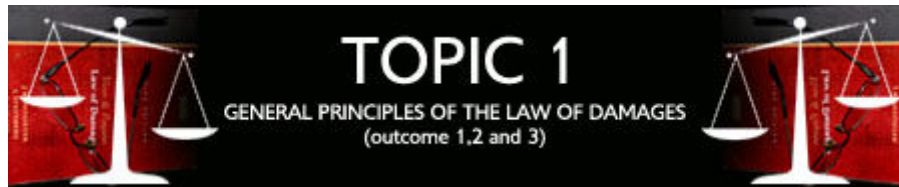


## Learning Unit 1 TOPIC 1: GENERAL PRINCIPLES OF THE LAW OF DAMAGES

### Source of the claim and concurrence of claims

---



## Learning Unit 1

### 1.3 Source of the claim and concurrence of claims



Par 1.5, 1.6.5 and fn 168

Par 11.9 and fn 420

Par 12.24.1

*Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC)

*MEC Department of Welfare, Eastern Cape v Kate* 2006 (4) SA 478 (SCA)

*Holtzhausen v ABSA Bank Ltd* 2008 (5) SA 630 (SCA)

### ASSIGNMENT 2 (Unique number 274057) - due date 29/7/2013

Identify who may claim in terms of which source of liability for what type of loss, and who must pay compensation for each loss suffered in the *car accident storyboard* (see section 6 after Topic 5 under "Learning Units"). (10 marks)

**You have to answer this assignment within the table provided under "Additional Resources".**

**An assignment submitted in any other format will not be marked.**

**We apologise for being so prescriptive on the method of submission, but this will expedite the marking of the assignments, which is in the best interests of all parties concerned.**

### ASSESSMENT CRITERIA FOR ASSIGNMENT 2

<b>Excellent (9-10)</b>	<b>Very good (7-8.5)</b>	<b>Good (5-6.5)</b>	<b>Needs improvement (4.5-2)</b>	<b>Unacceptable (0-1.5)</b>
<p>Correctly identified 8 different plaintiffs. Correctly identified 8 different losses being suffered. Correctly identified all three defendants and the source of liability in each claim.</p>	<p>Identified 6-7 different plaintiffs. Identified 6-7 different losses being suffered. Identified all three defendants, but couldn't link each defendant with the correct source of liability.</p>	<p>Identified 4-5 different plaintiffs. Identified 4-5 different losses being suffered. Identified only two of the defendants and linked both with the correct source of liability.</p>	<p>Identified 2-3 different plaintiffs. Identified 2-3 different losses being suffered. Identified only one defendant and the correct source of liability.</p>	<p>Identified only one plaintiff. Identified only one correct loss being suffered. Couldn't link defendant mentioned with the correct source of liability.</p>

**After you have submitted assignment 2, participate in Group activity 2 in your allocated group.**

**How to find your allocated group?**

**THE GROUP DIVISION WILL ONLY BE DONE AT THE END OF THE REGISTRATION PERIOD. AN ANNOUNCEMENT WILL BE PLACED ON THE SITE WHEN IT HAS BEEN DONE.**

**Group Activity 2**

Mr X was arrested by the police for alleged armed robbery. While in custody, the police interrogated Mr X and brutally assaulted him in order to get a confession out of him. Mr X was later found to be innocent of the alleged crimes. Mr X instituted action against the Minister of Police for the unlawful assault and torture by the police.

In your group, discuss the possible source(s) of Mr X's claim and identify the infringements that took place. Refer in your discussions to relevant case law as authority for your exposition. Each student in the group must list at least five postings. See the assessment criteria for this group discussion below.

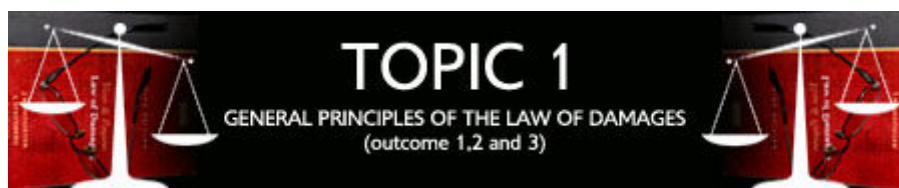
### Assessment criteria for Group Activity 2

Assessment criteria	Excellent (4.5-5)	Good (3-4)	Average (1.5-2.5)	Poor (0-1)
Quality of thoughts and response to others (20%)	Comprehensive and appropriate comments. Thoughtful, reflective and respectful of other students' comments. Shares insights in replies to other students.	Appropriate comments and responds respectfully to other students' postings.	Comments respectfully on other students' postings.	No response to other postings. Responds, but with minimum effort.
Relevance of discussion and quality of reply (30%)	Clear understanding of discussion topic. Comments very relevant to topic. Supports opinion with authority. Shares relevant case law.	Some understanding of discussion. Some reference made, but taken out of context. Response is relevant to posting. Minimum support for opinion.	Posting is on topic, but not enough reflection. Response is relevant to posting, but without authority.	No posting. Response not relevant to topic.
Understanding of content and context (20%)	Exceptional ability to critically analyse ideas for meaningful	Able to analyse other students' ideas and insights. Contributes to	Little or no analysis. Little contribution	Only one or no contribution.

	<p>discussion. Supplies meaningful answers to the stated questions.</p>	<p>finding answers to the stated questions.</p>	<p>to finding the answers.</p>	
<p>Personal contribution to discussion (20%)</p>	<p>Participates beyond the required number of postings. Extends the discussion with questions or examples that encourage others. Motivates other students to contribute.</p>	<p>Participates with the required number of postings. Participates, but does not post anything that encourages others to respond to the posting.</p>	<p>Participates minimally and without probing questions for further discussions.</p>	<p>Only one or no postings.</p>
<p>Language (10%)</p>	<p>Language is excellent and beyond what is expected at this level. No spelling or grammatical mistakes.</p>	<p>Language is clear and understandable. Only a few spelling and grammatical mistakes.</p>	<p>Spelling and grammar errors detract from the topic and make it hard to understand the meaning of the postings.</p>	<p>Serious spelling and grammar errors. Inappropriate language for university level.</p>



Assessment of damages



## Learning Unit 1

### 1.4 Assessment of damages



Par 4.1-4.2.2

Par 4.2.5-4.2.6

Par 4.3

Par 6.6-6.7 and fn 90, 91, 99

Par 8.3, 8.8

*Jowell v Bramwell-Jones* 2000 (3) SA 274 (SCA)

*Burger v Union National South British Ins Co* 1975 (4) SA 72 (W)



Par 4.5-4.6

Par 9.4-9.5

### Summary

It is important to know with reference to **which date the comparative method of determining damage** should be used. Various dates could be relevant: In the case of a delictual claim, the date of the delict, the date the first loss occurs, the date of judgment or the date on which payment is made may be relevant; in the case of a contractual claim, the date on which the contract was signed, the date of breach of contract, the date determined for performance or the date of the judgment may be relevant. The value of a patrimonial element is not static, but may change over time, and considering the effect of inflation, the date on which assessment must take place could make a huge difference in the calculation of the award. The relevant time of assessment should be the latest stage in a lawsuit when new evidence may be submitted, that is, at the time the judgment commences.

According to current law, the **date of the commission of the delict** is usually the decisive moment for determining delictual damage (including prospective damage). The date on which the first damage occurs is the earliest date on which all the elements of a delict are present. The courts do, however, take relevant information or facts that become available after that date into account in the quantification of the damages. An example would be where X receives certain benefits as a result of the damage-causing event, or where a plaintiff dies before the trial; in the latter case, the plaintiff's death is relevant in regard to that claim. In the case of breach of contract, the date with reference to which damage is to be assessed is usually the **date of breach of contract or the date of performance**, depending on the provisions in the contract. In the case of repudiation, the correct date could either be the date of performance or the date of cancellation.

**Damage and factual causation** are two separate requirements for both contractual and delictual claims for compensation. These two concepts are, however, interdependent, since factual causation can exist only in respect of damage and damage can only be caused by a particular kind of event.

We will illustrate this by referring to a **practical example** where causation and damage are relevant. In cases where the plaintiff suffers from a condition that existed before the damage-causing event and this condition renders damage more likely or more extensive, one of two possibilities exists: The court can either allow the full claim or reduce the claim due to the pre-existing condition. An example would be if X has a degenerative back condition that is asymptomatic, but owing to an accident, this condition is intensified to such an extent that X has to undergo a back operation. The strict application of the *talem-quaem* rule in this case would lead to the full liability of the defendant for all the losses suffered. The *talem-quaem* rule states that the plaintiff must take the victim as they find him/her. This rule is, however, tempered if it can be proven – by way of factual evidence – that the plaintiff would, in any event, at a later stage have shown symptoms or effects of his/her pre-existing condition. The courts will make a contingency adjustment, but the defendant would, in principle, remain liable for the foreseeable harm. The contingency must be applied according to the degree of probability proven.

In English law, the expression “damages” is used to denote both **compensation for patrimonial loss** and **compensation and satisfaction for non-patrimonial loss**. Compensation for patrimonial loss is awarded with the *actio legis Aquiliae*. The compensation awarded must eliminate, as far as money can do, the loss suffered. In the case of patrimonial loss, the **compensation** received in money can be a true equivalent of the loss suffered. **Satisfaction** for non-patrimonial loss is awarded with the *actio iniuriarum*, which may be instituted for an intentional infringement of someone’s personality. Satisfaction is the law’s answer to an injury to personality for which money is no natural equivalent and where a type of factual or financial restitution is impossible. The word “satisfaction” denotes different concepts, such as penance, retribution and reparation. In practice, satisfaction operates by neutralising a plaintiff’s feelings of outrage and revenge in that the defendant is compelled to pay an amount of money as a private penalty to the plaintiff. This involves a more refined form of the *talio* principle, in terms of which an aggrieved person may not take the law into his or her own hands. The penal function of the *actio iniuriarum* is criticised on the basis that punishment is not a purpose of the law of delict, but is the purview of criminal law. Today, satisfaction maintains a position somewhere between compensation and punishment.

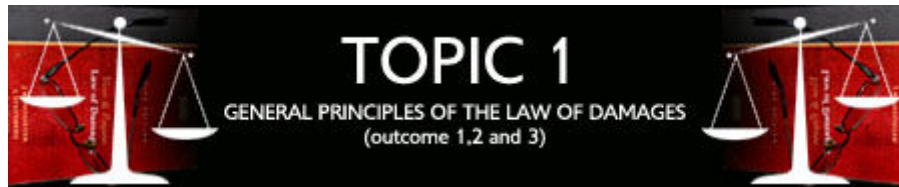
### **ASSIGNMENT 3 (Unique number 302228) - due date 05/08/2013**

**MULTIPLE-CHOICE QUESTIONS WILL BE PROVIDED CLOSER TO THE DUE DATE.**



**Purpose or object of damages**

---



## 1.5 Purpose or object of damages



Par 1.3

Par 8.5-8.7, 8.9 and fn 83, 104

*Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC)

*After you have studied the prescribed material participate in the activity below.*

### Activity 3

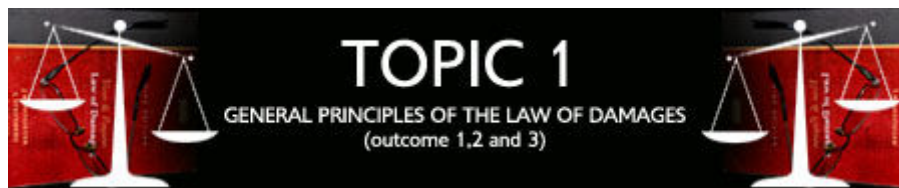
Indicate whether the following statements are *True* or *False* and supplement your answers with authority.

1. It is a generally acceptable view in our law that the object of damages is the provision of just, logical and practical rules and principles for solving problems regarding the determination of damage, damages and satisfaction.
2. A court may still order punitive damages in our law.
3. Perfect compensation is not attainable in a system that binds itself to the once-and-for-all form of compensation.
4. In the law of contract, compensatory and restitutionary damages have the same effect.
5. In *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) a claim for constitutional damages was rejected by the Constitutional Court.



## Compensating advantages

---



### 1.6 Compensating advantages



Par 10.1-10.2

#### Summary

A damage-causing event often not only causes loss but also has the result that a plaintiff receives some benefit. For example where X's car is negligently damaged by Y and his grandmother feels sorry for him and gives him R5 000 or his insurance pays out. What role do these benefits play in assessing X's damage and the compensation to be paid by Y? When benefits from a third party are taken into account, those benefits are called **compensating advantages**. If a benefit is disregarded in calculating damages, it is said that the **collateral source rule** applies (the matter is collateral and does not concern the defendant) or that the benefit is **res inter alios acta**.



Par 10.2.4, 10.3-10.11

Par 10.14, 10.16. 10.17.5

#### Assignment 4 (Unique number 244329 - due date 12/08/2013)

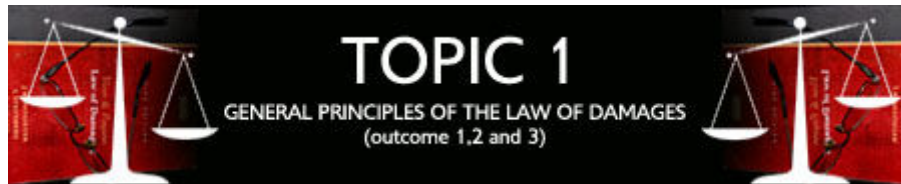
MULTIPLE-CHOICE QUESTIONS WILL BE PROVIDED CLOSER TO THE DUE DATE.





## Duty to mitigate

---



### 1.7 Duty to mitigate



Par 11.3 and fn 143, 159

Par 10.12

Par 13.3 fn 45

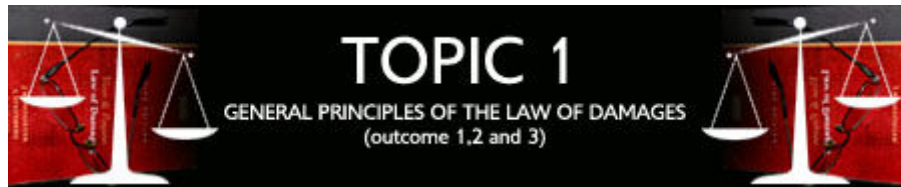
*Zweni v Modimogale* 1993 (2) SA 192 (BA)

*Kellerman v SATS* 1993 (4) SA 872 (C)



## Mora interest and inflation

---



## 1.8 Mora interest and inflation



Par 8.10

Par 11.7 and fn 319, 326, 332

*SA Eagle Insurance v Hartley* 1990 (4) SA 833 (A)

### Group assignment 5 (Unique number 308471 - due date 20/08/2013)

QUESTION TO BE DISCUSSED ON THE DISCUSSION FORUM WILL BE PROVIDED CLOSER TO THE ACTIVATION DATE.

