

# Delict

## 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 private law from French or Spanish law, such as Louisiana and the Philippines, but tort is the equivalent legal term used in common law jurisdictions and in general discussions of non-contractual liability.

In Spanish law, delito is any breach of criminal law, i.e. a criminal offence. In Italian law, delitto penale is the same concept, but illecito civile extracontrattuale (or delitto civile), like delict in Scots law, is an intentional or negligent act which gives rise to a legal obligation between parties even though there has been no contract between them, akin to common-law tort. German-speaking countries use the word Delikt for crime and unerlaubte Handlung for delict, but Deliktsrecht is a branch of civil law (similar to tort law). In French law, délit penal is a misdemeanor (between contravention ‘petty offence’ and crime ‘felony; major indictable offence’), while délit civil, again, is a tort. Because of this, French law prefers to speak in terms of responsabilité civile (‘civil liability’). In the canon law of the Catholic Church, a delict is a crime.

## 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.

## Tort

*term delict in articles about jurisdictions which specifically use the term to refer to torts (e.g. Scots Law of Delict and South African law of delict).*

A tort is a civil wrong, other than breach of contract, that causes a claimant to suffer loss or harm, resulting in legal liability for the person who commits the tortious act. Tort law can be contrasted with criminal law, which deals with criminal wrongs that are punishable by the state. While criminal law aims to punish individuals who commit crimes, tort law aims to compensate individuals who suffer harm as a result of the actions of others. Some wrongful acts, such as assault and battery, can result in both a civil lawsuit and a criminal prosecution in countries where the civil and criminal legal systems are separate. Tort law may also be contrasted with contract law, which provides civil remedies after breach of a duty that arises from a contract. Obligations in both tort and criminal law are more fundamental and are imposed regardless of whether the parties have a contract.

While tort law in civil law jurisdictions largely derives from Roman law, common law jurisdictions derive their tort law from customary English tort law. In civil law jurisdictions based on civil codes, both contractual and tortious or delictual liability is typically outlined in a civil code based on Roman Law principles. Tort law is referred to as the law of delict in Scots and Roman Dutch law, and resembles tort law in common law jurisdictions in that rules regarding civil liability are established primarily by precedent and theory rather than an exhaustive code. However, like other civil law jurisdictions, the underlying principles are drawn from Roman law. A handful of jurisdictions have codified a mixture of common and civil law jurisprudence either due to their colonial past (e.g. Québec, St Lucia, Mauritius) or due to influence from multiple legal traditions when their civil codes were drafted (e.g. Mainland China, the Philippines, and Thailand). Furthermore, Israel essentially codifies common law provisions on tort.

## 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 afford a remedy even if there has not been any previous instance of a remedy being given in similar circumstances'. While some terms such as assault and defamation are used in systems of tort law, their technical meanings differ in Scottish delict.

Although the law of delict affords reparation for wrongdoing such as assault, invasions of privacy and interference with property, 'in modern times statistically most of the case law on delict has been concerned with the law of negligence, interpretation of statutory regulations in workplace accident cases, and (particularly in the nineteenth century) defamation'. As in South Africa, there is no nominate 'tort' or 'delict' of negligence in Scotland, but rather the law recognises that delictual liability will arise where one person negligently [or indeed intentionally or recklessly] causes loss to another. In addition to this, the law of delict will afford remedy where legally recognised affront has been suffered, a pursuer's property interests have been interfered with, or some specific and nominate form of wrongdoing has been proven to occur (e.g., where the pursuer has been defamed).

## Act of God

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In legal usage in the English-speaking world, an act of God, act of nature, or damnum fatale ("loss arising from inevitable accident") is an event caused by no direct human action (e.g. severe or extreme weather and other natural disasters) for which individual persons are not responsible and cannot be held legally liable for loss of life, injury, or property damage. An act of God may amount to an exception to liability in contracts (as under the Hague–Visby Rules), or it may be an "insured peril" in an insurance policy. In Scots law, the equivalent term is damnum fatale, while most Common law proper legal systems use the term act of God.

It is legally distinct from—though often related to—a common clause found in contract law known as force majeure.

## 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 with bodily injury, a separate action arises, similar to the Aquilian action but of Germanic origin; finally, if the harm takes the form of injury to a personality interest (an *injuria*), the claim is made in terms of the *actio injuriarum*.

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.

List of Scottish legal cases

*Landmark or leading Scottish legal cases include: **Burmah Oil Co. v Lord Advocate** [1965] AC 75 **MacCormick v Lord Advocate** 1953 SC 396 **Bannatyne v Overtoun***

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Defamation

*media) and slander (oral speech). It is treated as a civil wrong (tort, delict), as a criminal offence, or both.[additional citation(s) needed] Defamation*

Defamation is a communication that injures a third party's reputation and causes a legally redressable injury. The precise legal definition of defamation varies from country to country. It is not necessarily restricted to making assertions that are falsifiable, and can extend to concepts that are more abstract than reputation such as dignity and honour.

In the English-speaking world, the law of defamation traditionally distinguishes between libel (written, printed, posted online, published in mass media) and slander (oral speech). It is treated as a civil wrong (tort, delict), as a criminal offence, or both.

Defamation and related laws can encompass a variety of acts (from general defamation and insult – as applicable to every citizen – to specialized provisions covering specific entities and social structures):

Defamation against a legal person in general

Insult against a legal person in general

Acts against public officials

Acts against state institutions (government, ministries, government agencies, armed forces)

Acts against state symbols

Acts against the state itself

Acts against heads of state

Acts against religions (blasphemy)

Acts against the judiciary or legislature (contempt of court)

Contract

*contrasted with tort law (also referred to in some jurisdictions as the law of delicts), the other major area of the law of obligations. While tort law generally*

A contract is an agreement that specifies certain legally enforceable rights and obligations pertaining to two or more parties. A contract typically involves consent to transfer of goods, services, money, or promise to transfer any of those at a future date. The activities and intentions of the parties entering into a contract may be referred to as contracting. In the event of a breach of contract, the injured party may seek judicial remedies such as damages or equitable remedies such as specific performance or rescission. A binding agreement between actors in international law is known as a treaty.

Contract law, the field of the law of obligations concerned with contracts, is based on the principle that agreements must be honoured. Like other areas of private law, contract law varies between jurisdictions. In general, contract law is exercised and governed either under common law jurisdictions, civil law jurisdictions, or mixed-law jurisdictions that combine elements of both common and civil law. Common law jurisdictions typically require contracts to include consideration in order to be valid, whereas civil and most mixed-law jurisdictions solely require a meeting of the minds between the parties.

Within the overarching category of civil law jurisdictions, there are several distinct varieties of contract law with their own distinct criteria: the German tradition is characterised by the unique doctrine of abstraction, systems based on the Napoleonic Code are characterised by their systematic distinction between different types of contracts, and Roman-Dutch law is largely based on the writings of renaissance-era Dutch jurists and case law applying general principles of Roman law prior to the Netherlands' adoption of the Napoleonic Code. The UNIDROIT Principles of International Commercial Contracts, published in 2016, aim to provide a general harmonised framework for international contracts, independent of the divergences between national laws, as well as a statement of common contractual principles for arbitrators and judges to apply where national laws are lacking. Notably, the Principles reject the doctrine of consideration, arguing that elimination of the doctrine "bring[s] about greater certainty and reduce litigation" in international trade. The Principles also rejected the abstraction principle on the grounds that it and similar doctrines are "not easily compatible with modern business perceptions and practice".

Contract law can be contrasted with tort law (also referred to in some jurisdictions as the law of delicts), the other major area of the law of obligations. While tort law generally deals with private duties and obligations that exist by operation of law, and provide remedies for civil wrongs committed between individuals not in a pre-existing legal relationship, contract law provides for the creation and enforcement of duties and

obligations through a prior agreement between parties. The emergence of quasi-contracts, quasi-torts, and quasi-delicts renders the boundary between tort and contract law somewhat uncertain.

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