

Nedbank Limited and Another v ABSA Bank Limited

Case No. 2011/4672

Liability in delict for wrongful conduct – Conduct inciting moral indignation does not equate to or give rise to a legal duty and does not establish wrongfulness in law – Changing moral attitudes of the community have to be assessed when arriving at a value judgment– In exercising a value judgment what is called for is a balancing against each other of established standards – Exercise of value judgment must embrace all relevant facts involving considerations of policy – South African law sufficiently developed to allow the court to assess whether public policy considerations impose a legal duty based on the facts and circumstances.

Principles of exception – In considering an exception that the pleadings do not sustain a cause of action, court will accept the allegations pleaded by the plaintiff – Pleadings must be read as a whole and an exception cannot be taken to a paragraph or part of a pleading that is not self-contained – Particulars should be read by a mind willing to understand. Exception directed at element of unlawfulness – Excipient, who alleges that the summons does not disclose a cause of action, must establish that upon any construction of the particulars of claim, no cause of action is disclosed.

Wrongfulness – It is competent for a court to determine wrongfulness on exception but in certain circumstances appropriate to do so.

Bank trading in derivative instruments – Guarantor bank alleging that trading bank owed legal duty to exercise due care and skill reasonably expected of a banker and not

engage in reckless or negligent lending practices – Argument that before a legal duty can arise there must be a special relationship between the parties unfounded.

Role of banks in society – Necessary that the banking profession retain its professional dignity and reputation of reliability in which the public as a whole generally repose confidence – Banks expected to adhere to the principle of integrity in all their dealings and always to provide clear, understandable and accurate information.