

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **LAW OF DELICT**
COURSE CODE : **DL 025**
TIME ALLOWED : **THREE (3) HOURS**

1. **ANSWER ANY FOUR (4) QUESTIONS OF YOUR CHOICE.**
2. **READ AND UNDERSTAND WHAT THE QUESTIONS REQUIRES OF YOU.**
3. **YOUR ANSWER SHOULD BE WELL ORGANIZED AND CONGENT.**
4. **ALL QUESTIONS CARRY EQUAL MARKS.**

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1

Conduct is negligent if the actor does not observe that degree of care which the law of delict requires. The standard of care which the law demands is ordinarily that which a reasonable man would exercise in the same situation.

In light of the decision in *Cape Town Municipality v Paine 1923 AD 207*, discuss what you understand about the afore going statement.

[25 MARKS]

QUESTION 2

To succeed in a delictual action, the Plaintiff must allege and prove the act or omission which is the basis of his cause of action. Liability for omission will only arise where the Defendant has by prior positive conduct created a potential risk of harm and has failed to take reasonable steps to prevent the risk materializing.

Discuss the above statement in relation to; prior conduct, control of dangerous things, relationship of the parties, public office and statute.

[25 MARKS]

QUESTION 3

Damages will not be recoverable if the damage, their extent or nature were not foreseeable or were too remote. To sustain a cause of action it is necessary that the defendant must have caused the harm. Discuss fully what the element entails. Illustrate your answer by reference to decided cases.

[25 MARKS]

QUESTION 4

In *Guggenheim v Rosenbaum (2) 1961 (4) SA 21 (W)*, the Court found that the plaintiff had proved the existence of a contract to marry and that she was entitled to damages for breach of contract as well as general damages for the defendant's commission of a delict in the form of an iniuria. Trollop J stated as follows, "For example, damages might be awarded for the contractual but not for the delictual remedy or vice versa. The former has to be proved with that degree of precision required in breach of a contract whilst the latter is in the Court's discretion."

In a situation where there appears to be a concurrency of actions, would you proceed under delict or contract? Support your answer with decided cases.

[25 MARKS]

QUESTION 5

- (a) Head teacher of Mvasi High School inflicted mass corporal punishment on a number of students who refused to divulge the identity of those students who had interrupted classes and *toyi - toyi* inside the lecture rooms. The students reported the matter to the Matsapha police station who arrested the head teacher. He was convicted of assault. On appeal it was argued on his behalf that he has a right to exercise disciplinary chastisement.

Discuss the extent and scope of the right to disciplinary chastisement. [15 marks]

- (b) What are the requirements of the defence of Volenti non fit injuria? In certain instances it is available yet in others not. Where should the line be drawn? Illustrate your answer with examples.

[10 marks]

[25 MARKS]

QUESTION 6

There are various defences to a defamation suit. Discuss with the aid of decided cases what these defences are?

[25 MARKS]

QUESTION 7

Write short notes on the following:

- (a) Actio injuriarum and lex aquilia
- (b) Patrimonial loss
- (c) Capacity
- (d) Unlawful competition
- (e) Once and for all rule

[25 MARKS]