

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2005

TITLE OF PAPER : **LAW OF DELICT**

COURSE CODE : **DL 025**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

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

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 this element entails. Illustrate your answer by reference to decided cases. [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 this 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

The action legis Aquilia enabled a Plaintiff to recover patrimonial loss suffered through a wrongful and negligent act of the Defendant. The scope of the action has been widened to enable the Plaintiff to recover purely economic loss.

With reference to the case of Greenfield Engineering Workers (Pty) Ltd vs NKR Construction (Pty) Ltd 1978 4 SA 901 (N) discuss the above statement.

[25 MARKS]

QUESTION 4

A delict has been defined by stating what it is not. Define what a delict is, and include in your answer what you perceive/understand to be the purpose of the law of delict.

[25 MARKS]

QUESTION 5

Write short notes on the following:

- (a) Animus injuriandi
- (b) Economic loss
- (c) Disciplinary chastisement
- (d) Contributory negligence
- (e) Factual causation

[25 MARKS]

QUESTION 6

To establish delictual liability, the law requires, not merely that the defendant perpetuate unlawful conduct, but also that this unlawful conduct cause harm.

Discuss fully what this element entails. Use decided cases to illustrate your answer.

[25 MARKS]

QUESTION 7

An award for damages for defamation serves two broad purposes; vindication of the Plaintiff's reputation and providing him or her with a *solatium* for wounded feelings.

What requirements should the plaintiff prove to succeed in his/her action.

[25 MARKS]