

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2005

TITLE OF PAPER : **THE LAW OF DELICT**

COURSE CODE : **L306**

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

INSTRUCTIONS : **ANSWER ANY FOUR (4) QUESTIONS**

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

QUESTION 1

The Emaswatini Diamond Mining Company carries on mining operations on a property adjoining a public park. The park contains a children's playground and a number of children live in the area. A fence separates the mining property from the park. Zwelisha and some other children crossed the fence and played on an anchor pulley which forms part of the company's hosting gear. (Although the company knows that children often played on the property, it did not know that children played on the wheel). The pulley wheel started and Zwelisha's legs were caught between the pulley and the rope, resulting in injuries which necessitated amputation of both limbs.

Zwelisha's parents intend suing the company. Advise them.

[25 marks]

QUESTION 2

Mabuza, a leader of a religious sect "The Lord's Crusaders", owns an adjoining house to Jabu. Mabuza uses the house as a residence not only for himself and his co-believers but also conducts religious services there seven days a week. The services are accompanied by loud singing and yelling, frenzied praying, stamping of feet, clapping of hands and groaning. Jabu's complaints to Mabuza have been met with an assurance from Mabuza that a higher kingdom of bliss and tranquility awaits him in the world hereafter and that he should forebear the present inconvenience for his future salvation. Jabu not being satisfied with this promise, seeks your advice on his legal remedies.

[25 Marks]

QUESTION 3

Gama was in financial difficulty. At a board of directors' meeting he appealed to the other Board Members to help him by repaying his loan account. Masimula replied to the effect that the company was not a charitable organisation. Gama became angry and replied, "you are the last to talk. You embezzled E33.000 from this company."

He was referring to an incident which occurred ten years previously.

What are Masimula's chances of success if he sues Gama for defamation?

[25 Marks]

QUESTION 4

A vehicle insured by UNISWA Insurance Company which was driven negligently collided with Buyisile Dube, who was on roller skates. As a result of a major head injury, Buyisile was in a permanent vegetative state, unaware of all bodily functions, blind, mute and deaf. She was 100% disabled, with no prospect of recovery.

Her father and natural guardian is considering suing for damages. Discuss the approach adopted by our courts in the so called "cabbage" cases and advise the father as to his daughter's chances of being awarded any damages.

[25 Marks]

QUESTION 5

Nkambule lived on a small farm. Although the house was fenced in, there was an opening in the fence through which people could enter. He kept a fierce dog on the premises to protect his home and his family. The dog could not roam freely, being fastened to a wire, but it was able to move from the back to the front of the house, quite easily. A warning notice was placed on one of the stoep pillars near the front door of the house.

Vilane was looking for someone whom he believed was in the vicinity of the premises. He went to the front door and knocked. Nkambule's wife opened the door and he asked her if she knew the whereabouts of the men he was looking for. At that stage the dog rushed onto the stoep and attacked Vilane.

As a result of the dog bite Vilane suffered considerable pain and discomfort and he lost financially because he was unable for a couple of weeks or more to carry on his business and further that he suffered extreme shock.

He claims that he is entitled to recover damages either by reason of the *actio de pauperie*, or by reason of an action based on Nkambule's negligence. Discuss.

[25 marks]