

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATIONS, JULY 2005

TITLE OF PAPER : THE LAW OF DELICT

COURSE CODE : L 306

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS.

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

QUESTION 1

Vilane was a passenger in a vehicle which was travelling behind another vehicle driven by Simelane. Earlier, when the driver requested him to fasten his seat belt, Vilane declined to do so. Without any warning of his intentions, Simelane decided to turn back and moved across the path of the vehicle behind him. The vehicles collided and Vilane sustained serious injuries, particularly to the head.

Vilane intends suing Simelane. Discuss. [25 marks]

QUESTION 2

Gule had been travelling on a train, having been given a free pass by the Railways. His free pass was conditional on the fact that he accepted all risk of injury to himself and would not hold the railways liable. Gule died when the train was involved in an accident and his children want to sue the Railways for damages.

Discuss, making reference to the dependents action and relevant authorities. [25 marks]

QUESTION 3

(a) What are the essentials of the defence of fair comment? [10 marks]

(b) A, who had been expelled from a trade-union, printed an article which purported to give an account of the expulsion proceedings and which stated that the union's report found A guilty of disruptive activities and assisting an employer against the union. In the same issue there was an editorial commenting on attacks on the labour cause and which ended by saying that unscrupulous individuals such as the plaintiff could be found willing to work against labour. [15 marks]

[Total Marks = 25 marks]

QUESTION 4

Veronica's husband, after drinking some tea, experiences persistent vomiting for a period of three hours. Along with two other men who had also drunk the tea and who were in a similar condition, he went to the casualty department of a hospital. A nurse (against whom no complaint was made) contacted Dr. B. Anguiah by telephone, telling him that the three men, Emmanuel, John and Vusi, were complaining of vomiting after drinking tea. Dr Anguiah, who was himself tired and unwell, sent a message to them through the nurse to the effect that they should go home to bed and call their own doctors. Some time later, Emmanuel, Veronica's husband died from arsenical poisoning.

Veronica wishes to bring an action. Advise her. [25 marks]

QUESTION 5

A motor car driven by Nxumalo had stalled on a railway bridge. Nxumalo and his wife LaMabuza and their niece got out to push it to the other side of the rails, leaving two minor children in the car. Four men came up apparently to assist in the pushing. On arrival, however, they assaulted Nxumalo who was along-side the steering. LaMabuza, who had been pushing from behind, whilst frantically hastening to assist Nxumalo, collided with an on-coming vehicle insured by Maswati Insurers and was injured. Nxumalo's assailants escaped and Nxumalo directed his attention to LaMabuza, when at that stage a heavy truck insured by Mnguni Insurance Company collided with the rear of Nxumalo's car due to the negligence of the truck's driver. Upon the collision Nxumalo exclaimed "my children" and started off towards his car. About two minutes later Nxumalo collapsed due to a stroke, and was unable to walk. Three days later he died from the stroke. LaMabuza wants to sue for loss of support on behalf of herself and her two minor children, and for injuries she sustained.

Advise her on who she could sue giving reasons for your answer.

[25 Marks]