

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2006

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 QUESTION REQUIRES OF YOU
3. YOUR ANSWER SHOULD BE WELL ORGANISED AND COGENT.
4. ALL QUESTIONS CARRY EQUAL MARKS.

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

QUESTION 1

Kofi is a self employed "bush mechanic" and earns a monthly salary of E3,000.00 when business is good. On 13th November 2001 he was arrested by members of The Royal Swaziland Police on charges of rape. Since this offence is now classified as a schedule IV offence and bail is fixed at E15,000 he could not afford the bail and has been in custody for over three years. He now suffers from peumonia which he contracted whilst in custody.

At Kofi's trial at the High Court, the complainant when asked to identify him, failed to do so positively and the Court released him on the basis that the description given by the complainant does not match that of Kofi.

- (a) Has Kofi suffered any damage?
- (b) Regardless of your answer to the above question, would the Apportionment of Damages Act No.4 of 1970 apply?
- (c) What would your comment be with regard to the once and for all rule and mitigation of damages principles.

QUESTION 2

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.

QUESTION 3

Write short notes on the following

- a) Provocation,
- b) Superior orders
- c) Capacity
- d) Negligence
- e) *volenti non fit injuria*

QUESTION 4

The action *injuriarum* protects the dignity of Plaintiff. Dan Khrame, a Swazi graduate from the university of Oxford desirous of being a true Swazi warrior, decided to undergo the initiation process (kubutseka) and the regiments gave him a name "Buso benfene" (monkey face) to which he did not take kindly and stormed out of the cattle byre in protest.

Two weeks later Dan served the authorities manning the cattle byre with summons claiming the sum of E500.000 as compensation for defamation.

Advise Dan whether he has any prospects of success and cite relevant case law in support of your answer.

QUESTION 5

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

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

QUESTION 6

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.

QUESTION 7

Wrongfulness involves the infringement of a legally protected right or interest. With the aid of decided cases, discuss the role of this element in establishing delictual liability.