

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

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 your understanding of the above statement.

QUESTION 2

Write short notes on the following

- (a) *Actio injuriarum*
- (b) Economic loss
- (c) Disciplinary chastisement
- (d) Unlawful competition
- (e) Injurious falsehoods

QUESTION 3

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.

QUESTION 4

Now that you have completed this course, what do you consider to be its essential features and what does the law of delict seek to achieve. Your answer should be restricted to the elements necessary to sustain a cause of action. Cite applicable case law to expound on your answers.

QUESTION 5

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

QUESTION 6

In *Guggenheim v Rosenbaum* (2) 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*. Trolip 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.

QUESTION 7

In the case of *Bourhill vs Young* (1942) 2 ALL ER 396 (HL) the House of Lords held that, the Appellant had failed to establish that the cyclist owed any duty to her at the time of the collision.

Discuss what you understand by the duty of care. Cite cases to illustrate your answer