

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

EXAMINATION PAPER: MAY 2006

TITLE OF PAPER : LAW OF DELICT

COURSE CODE : L306

TIME ALLOWED : 3 HOURS

MARKS ALLOCATED : 100 MARKS

INSTRUCTIONS : ANSWER ALL FIVE QUESTIONS.

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THE INVIGILATOR**

QUESTION 1**ANSWER EITHER QUESTION (a) OR (b).**

- (a) Roger Simelane goes on a drinking spree. He indulges to such an extent that he loses consciousness while sitting in his car. At one stage he gets convulsions and in the process his arm disengages the hand brake. The car starts to accelerate downhill and smashes through the shop window of Mr Magagula, causing extensive damage. Mr Magagula institutes a claim for damages against Roger and the latter engages you as his legal representative. Render a substantiated legal opinion on Roger's chances of successfully employing the defence of automatism. (20)
- (c) Bongani Dlamini who is a swimming instructor for the Defence Force notices a few old people pointing to a child who is struggling in the water, about 10 metres from the river bank, in deep water. "Please help, young man!" an old man shouts. "My grandchild is drowning. Please save him!" Bongani does not wish to become involved and, furthermore, he does not wish to soil his uniform or even to undress in front of other people in order to save the child. He thus ignores the appeal and walks away, even though he could have saved the child easily. The latter, Sammy Fakudze, is washed up on the river bank after an hour, in a state of unconsciousness. It is later ascertained that he sustained serious brain damage due to a lack of oxygen. A medical specialist later sympathises with Sammy's grandfather, saying: "If your grandson had been rescued five minutes earlier, he would not have suffered brain injuries at all." Discuss the possibility that Bongani may be delictually liable for the damage suffered by Sammy, for failing to render assistance. Restrict your discussion to the question of wrongfulness. (20)

[20]**QUESTION 2**

Mr Motsa is ascending a steep pass when he notices a terrific rock fall on the mountain above him. Thousands of tons of rock start rolling down in his direction. In order to evade being killed, he swerves his 4x4 vehicle onto the road shoulder just under a cutting, to use the cutting as a shelter against the rocks. However, Mr Bhembe's car is parked there and Mr Motsa slams into the rear of his vehicle. The avalanche thunders overhead and, by some strange twist of affairs, not even one small stone falls onto the road. Had Mr Motsa simply kept on travelling, he would not have been struck at all. Mr Bhembe now proceeds to institute a delictual claim against Mr Motsa's insurance company for the amount of E250 000, being the total value of his vehicle which is a total write-off. Evaluate Mr Motsa's chances of succeeding with a defence of necessity. Should he fail in this defence, does this mean that he will be liable on account of negligent conduct? Substantiate by referring to theory, as well as case law.

[20]**QUESTION 3**

Formulate the test for negligence as reflected in the judgment of Holmes JA in the famous South African case of *Kruger v Coetzee* 1966 2 SA 428 (A). Then explain the application of the two most important stages of that test by extensively referring to case law.

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QUESTION 4

- (a) A wrongfully and culpably causes patrimonial damage to B. You may assume that B proves all the elements of delict on A's part. B suffers damage in the amount of E72 000. What is the legal position in the following cases?
- (i) A acts intentionally and B's conduct deviates 25% from that of the *diligens paterfamilias* in respect of his own loss. (2)
 - (ii) A's conduct deviates 75% from that of the *diligens paterfamilias* and B has contributory intent. (1)
 - (iii) A acts intentionally and B has contributory intent. (2)
 - (iv) B's measure of contributory negligence is 50%. (2)
 - (v) A's measure of negligence is 50% and that of B is 40%. (3)
- (b) A crashes his canoe into the canoe of X. Both were frolicking with their boats in the white waters of the Usutu River. X sustains serious head injuries. He proves all the elements of delict on A's part. X was blameless in respect of the occurrence of the crash itself. X suffers a total of E95 000 damage as a result of his head injuries (brain haemorrhage). Had he worn a crash helmet as required by the terms of his contract with Swazi Trails, the concern which organised their adventure outing, his head injuries would have amounted to losses in the total of only E14 000.
- (i) If A can prove that X was 20% negligent in respect of his serious head injuries, for which amount will A be liable towards X, if A himself was 70% negligent in respect of that damage? Show how you calculated the amount. (7)
 - (ii) Supply the content of the applicable statutory measure which governs this position. (3)

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QUESTION 5**ANSWER EITHER QUESTION (a) OR (b).**

- (a) Justice is struck on the head by a stone which Vusie hurls at a stray dog. Assume that Vusie's conduct conforms to the requirements of a delict. Due to the fact that Justice has a weak spot in his skull precisely where the stone has struck him, he sustains very serious injuries and subsequently suffers from epileptic fits.
- (i) An actuary calculates that Justice suffers damage in the amount of E600 000, being loss for medical expenses, contingencies, as well as pain, suffering and loss of amenities of life. Will

Vusie be liable for the total amount? Discuss his legal position. (10)

(ii) If a doctor prescribes a new drug for Justice's condition after a year, and the drug causes Justice to have a stroke after he had eaten cheese while using the drug (a fact which is unknown to medical experts at the time), resulting in further losses of E250 000, will Vusie be liable for this amount? Discuss his legal position. (10)

(b) (i) John makes a good living as a back-yard mechanic. He operates his business without a trader's licence from his residential premises in Manzini. He is assaulted by Eric and suffers such serious injuries that he is unable to walk again. John institutes a delictual claim against Eric, amongst others for the amount of E300 000, as a result of having to discontinue his mechanic business, as he is unable to perform any manual labour. Eric's lawyer advises that John will not be able to claim the E300 000. Evaluate this opinion. (10)

(ii) Mr Sithole is incapacitated as a result of a car accident in Mbabane. In the course of a civil suit for damages that he has instituted against the X Insurance Co, it is contended on behalf of the insurer that the amount of damages that Mr Sithole has claimed, should be reduced by an amount paid out to him by his employer as pension. Discuss this question by referring, *inter alia*, to appropriate legislation. (10)

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