

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER : JULY 2006

TITLE OF PAPER	:	LAW OF DELICT
COURSE CODE	:	L306
TIME ALLOWED	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER ALL <u>FIVE</u> QUESTIONS.

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

QUESTION 1

Police Sergeant Fakudze is part of a police team investigating stock theft. While inspecting a poorly lit area at dusk, a person suddenly jumps up in front of him and bears down on him with a blood-curdling shout, wielding something that resembles an axe. Sergeant Fakudze swings his shotgun around and shoots the attacker in the legs, wounding him seriously. On closer investigation it transpires that the youthful Lucky Dlodlu had been wielding an imitation axe made of cardboard and that he was merely pulling a misguided prank on the policeman to scare him out of his wits. Lucky now institutes a delictual claim against the State (Minister of Justice), in whose employ Sgt Fakudze is. Discuss Lucky's chances of success against the background of all the requirements for the ground of justification which the defendant would employ. **Do not discuss the requirements for vicarious liability.**

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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.

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QUESTION 3

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c).

- (a) In testing whether a certain consequence had been reasonably preventable by the *diligens paterfamilias*, as part of the test for negligence, four basic considerations exist that influence the reaction of the reasonable person in a situation posing a foreseeable risk of harm to others. Mention these four considerations and discuss the facts and judgment of three cases illustrating application of any of these considerations. (10)
- (b) "A person placed in a situation of imminent peril through no fault of his own will not be held negligent merely because he failed to take what afterwards appears to have been the best course. The so-called doctrine of sudden emergency is merely the application of the reasonableness criterion to the actor's circumstances ..." (Boberg *The Law of Delict - Aquilian Liability* (1984) 334). In terms of the rules that have developed in practice, what requirements have to be met before a defendant will succeed on the basis of the doctrine mentioned? Discuss the facts and judgments of four cases in which the defendant had raised the defence of lack of negligence on the basis of the doctrine of sudden emergency. (10)
- (c) A institutes a delictual claim against B on account of a delict which B committed against him.

Assume that B's conduct conforms to all the requirements for delictual liability. A suffers damages in the amount of E90 000.

(i) Were the court to determine that A's conduct deviates 33⅓% from that of the *diligens paterfamilias*, do you then have enough particulars to enable you to calculate an apportionment of damages? Substantiate your answer in detail. (3)

(ii) Were the court to determine A's contributory negligence as 25% and the negligence of B as 50%, what amount can A claim? Afford a step-by-step calculation and, in addition, reflect the content of the relevant statutory measure which forms the basis of apportionment of damages in Swaziland. (7)

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QUESTION 4

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c).

(a) Dr Mabuza is injured in a car accident caused by Mrs Dube's negligent driving. Dr Mabuza who has been suffering from high blood pressure and a serious heart condition for years, now suffers more severe bodily injuries than would have been the case if he had been healthy. Explain whether Mrs Dube will be liable in delict for the additional loss suffered by Dr Mabuza as a result of his poor health. (10)

(b) Mrs Mabandla is seriously injured in a car accident. Because she is no longer able to work, she takes early retirement and receives a pension from her employer's pension fund to which she has contributed throughout her entire career. In addition she receives benefits from a personal disability insurance fund to which she has voluntarily contributed. When Mrs Mabandla sues the statutory insurer, amongst others, for the loss of her earning capacity, she is met by the defence that the amounts received by her from the pension and insurance funds should be deducted from her claim. Advise her in the light of statutory, as well as case law. (10)

(c) Sarah makes a very good living out of prostitution. She left school during her fourteenth year and has received no formal training for any profession. She is maimed for life in a bus accident and will probably be bedridden for the rest of her life. When she sues the statutory insurer of the bus, *inter alia* for the loss of her earning capacity as a prostitute, the defendant refuses to pay. What are her chances of succeeding when she can actually prove that she is only 22 years old and that she has collected an average annual income from prostitution over the last four years of E200 000? (10)

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QUESTION 5

ANSWER ANY TWO OF THE FOLLOWING QUESTIONS (a) - (c).

(a) While Sam is working at a factory one day, burglars enter his property and steal some items. When leaving, they fail to close the garden gate and Butch, Sam's vicious dog, escapes into the public road. There it attacks Vusie, the postman, seriously injuring him. Discuss in detail whether Vusie will be able to claim damages from Sam on account of the injuries inflicted by Butch. (10)

- (d) Roger works for Dischem Pharmacy in Manzini as a delivery man. He drives a light delivery van to deliver parcels and other small items. After having delivered goods in Mbabane one morning, he drives back to Manzini to collect another cargo. On the way he decides, against the strict orders of his employer, to drive into the premises of the Royal Swazi Sun Hotel to drink one beer at the poolside. However, he ends up drinking ten beers and when he finally starts the van to drive back to his work, he crashes into one of the large glass windows of the conference centre. In the process he causes damage in the amount of E150 000. Dischem Pharmacy and their insurer refuse to pay for the damage caused by Roger. Advise the Royal Swazi Hotel as to the legal position. (10)
- (e) Discuss two modern theories underlying delictual liability without fault; then state the general characteristics of such faultless liability. (10)

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