

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATION, JULY 2007**

**TITLE OF PAPER :      LAW OF DELICT**

**COURSE CODE     :     DL 025**

**TIME ALLOWED    :     THREE (3) HOURS**

**INSTRUCTIONS    :**

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. YOUR ANSWER MUST BE COGENT, REASONED AND WELL ORGANISED**
- 3. READ AND UNDERSTAND WHAT THE QUESTION REQUIRES OF YOU**
- 4. ALL QUESTIONS CARRY EQUAL MARKS.**

**TOTAL MARKS     :     100**

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### QUESTION 1

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. (25 Marks)

### QUESTION 2

Write short notes on the following

- a) Conduct / act (5)
- b) Superior orders (5)
- c) Factual causation (5)
- d) The objective test (5)
- e) *volenti non fit injuria* (5)

(Total 25 Marks)

### QUESTION 3

The action *injuriarum* protects the dignity and good name of a person. Discuss the requirements necessary to establish a defamation suit. Support your answer with reference to decided cases. (25 Marks)

### QUESTION 4

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. (25 Marks)

### QUESTION 5.

Liability for omission is based on a negative duty to avoid causing injury to others and not on a positive duty to shield others from injury.

Explain the relevance of the above statement in relation to: prior conduct, control of dangerous things, relationship of the parties, public office and statute. (25 Marks)

**QUESTION 6**

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. (25 Marks)

**QUESTION 7**

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.

(25 Marks)