

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2007

TITLE OF PAPER : THE LAW OF DELICT

COURSE CODE : L 306

TIME ALLOWED : THREE (3) HOURS

TOTAL MARKS : 100

INSTRUCTIONS :

1. THE PAPER CONSISTS OF FIVE QUESTIONS.
2. ANSWER ANY FOUR (4) QUESTIONS.

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

QUESTION 1

Gama purchased a dwelling house at Coates Valley in 2005. Mormond Electrical Co. (Pty) Ltd. supplied her with a certificate to the effect that the electrical wiring of the house complied with municipal regulations. The certificate was made by Mormond Electrical Co. (Pty) Ltd, which was said to be a registered electrician within the Manzini Municipal area. Upon selling the house in February 2007, Gama undertook to provide the purchaser with a similar certificate. She then discovered that the Electrical wiring – which had meanwhile remained unaltered – did not comply with municipal regulations, and was obliged to spend E150.000 to rectify the position.

Gama now wishes to sue Mormond Electrical Company basing her claim on negligent misstatement.

Advise her.

[25 marks]

QUESTION 2

In digging up a road the servants of Dlamini, Simelane and Co. (Contractors) Ltd. negligently damaged an electric cable which they knew supplied electricity to Steel and Wire Ltd's factory. The factory was accordingly without power for 14 ½ hours. Steel and Wire Ltd. was a manufacturer of stainless steel, and when the power failed a danger arose that molten metal in an arc furnace would solidify and damage the machine. Steel and Wire therefore melted the material with oxygen and discharged it from the furnace through a tap. This caused physical damage assessed at E20.000. If the electricity had not failed and that particular melt had been completed properly instead of having had to be destroyed to protect the machine, Steel and Wire would have made a profit on it of E40.000.

Moreover, during the 14 1/2 hours that the factory lacked power Steel and Wire would have put four more melts through the furnace; by being deprived of the ability to do so it lost a profit of E200.000.

Discuss all the legal issues brought forward by these facts.

[25 marks]

QUESTION 3

Malaza was a carpenter who had been assisting a crane operator, one Masuku, to load pipes at a railway station. Above the crane was an open electric wire carrying 3 000 volts, which current had been switched off during the loading operation. While Masuku and his three assistants were absent, Malaza was informed by a shunter that the electric current in the overhead wire was about to be switched on for shunting purposes and that he would be informed when the current was switched off and it was again safe to operate the crane. To this Malaza replied "very well". When Masuku returned Malaza omitted

to convey the shunter's warning to him. Loading continued and shortly afterwards the top of the crane touched the electric wire and Masuku was electrocuted.

Gabsile the widow of Masuku is considering suing Malaza for loss of her husband/breadwinner.

Advise Gabsile illustrating with decided cases when our courts will impose a legal duty to act on a defendant and what the basis of that duty is.

[25 marks]

QUESTION 4

Dube put an advertisement in the Times of UNISWA seeking the services of a qualified electrician who would wire his house built on Swazi Nation Land at Dlangeni. Vilane in response to the advertisement, contacted Dube assuring him that he is a qualified electrician whereupon Dube gave him the job. Three months after Vilane had wired the house, the house was burnt down on account of the faulty wiring by Vilane. It turned out that Vilane never attained any qualification on electrical work. Dube suffered damage to the tune of E250.000.

Advise Dube basing your discussion on the maxim *imperitia culpae adnumeratur*, illustrating your answer with decided cases.

[25 marks]

QUESTION 5

Sipho Mvakali, a Minister for Traditional and Cultural Affairs in the government of the state of UNISWA, is seen by a journalist in a striptease joint in one of the country's popular discos. Later the same journalist spots the Minister who is a married man in a very compromising position with one of the disco's sexual workers in the back seat of the minister's car. The journalist snaps several photographs of the Minister and these are displayed in the front page of the Times of UNISWA for which the journalist works with the caption, "IS THIS MAN FIT TO BE A PUBLIC FIGURE?"

The Minister on seeing the paper gets very angry and approaches your law firm with a view to instituting legal proceedings against the paper on the grounds of:

1. Invasion of privacy, and
 2. defamation.
- Will the Minister succeed.

[25 marks]