

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, 2008

TITLE OF PAPER : LAW OF DELICT

COURSE CODE : DL025

TIME ALLOWED : 2 HOURS

INSTRUCTIONS : 1. THERE ARE 6 QUESTIONS IN THIS PAPER. EACH QUESTION CARRIES 25 MARKS.

2. ANSWER ANY THREE (3) QUESTIONS.

3. YOUR ANSWERS MUST BE COGENT, REASONED AND WELL ORGANISED.

TOTAL MARKS :100.

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1

Whilst Jack Daniels was crossing White Horse Street, he was knocked down by Peroni's car and was fatally injured. You have now been appointed as an Executor/ Executrist of the estate of Jack Daniels.

Discuss whether you can institute an action for: pain and suffering; loss of amenities of life; medical and hospital expenses; funeral expenses and future loss of earnings.

Substantiate your reasons with relevant case law.

(25 marks)

QUESTION 2

A delict has been defied 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 3

What is the distinction between remedies and defences? In your answer, state the circumstances under which they can be utilized.

(25 marks)

QUESTION 4

Discuss the essential elements of a delict and state the relevancy of each in establishing delictual liability. Illustrate your answer with the aid of decided cases in respect of each element.

(25)

QUESTION 5

A person who willingly consents to the defendant's act in the form of either a specific harmful act or an activity involving risk of harm, cannot complain that a delict has been committed against him. This defence is applied with great caution and circumspection .

In light of the above statement discuss what this defence entails and why great caution and circumspection is applied.

(25)

QUESTION 6

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.

Discuss the above statement with reference to:

- a) Foreseeability test
- b) The reasonable man
- c) children

(25)