

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW

SUPPLEMENTARY 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

To establish delictual liability, the law requires, not merely that the defendant perpetuates unlawful conduct, but also that this unlawful conduct causes harm.

Discuss fully what this element entails. Use decided cases to illustrate your answer.

(25 marks)

QUESTION 2

Write short notes on the following:

- (a) Actio injuriarum and lex aquilia
- (b) Patrimonial loss
- (c) Capacity
- (d) Unlawful competition
- (e) Once and for all rule

(25 marks)

QUESTION 3

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.

In light of the decision in *Cape Town Municipality v Paine* 1923 AD 207, discuss what you understand about the afore going statement.

(25)

QUESTION 4

The action *injuriarum* protects the dignity of Plaintiff. Dan Khrame, a Swazi graduate from the university of Oxford desirous of being a true Swazi warrior, decided to undergo the initiation process (kubutseka) and the regiments gave him a name "Buso benfene" (monkey face) to which he did not take kindly and stormed out of the cattle byre in protest.

Two weeks later Dan served the authorities manning the cattle byre with summons claiming the sum of E500.000 as compensation for defamation.

Advise Dan whether he has any prospects of success and cite relevant case law in

support of your answer.

(25)

QUESTION 5

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

Explain the relevancy of the above statement in relation to the following, prior conduct, control of dangerous things, relationship of the parties, public office and statute.

(25)

QUESTION 6

Damages will not be recoverable if the damage, their extent or nature were not foreseeable or were too remote. To sustain a cause of action it is necessary that the defendant must have caused the harm. Discuss fully what this element entails. Illustrate your answer by reference to decided cases.

(25)