

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : **LAW OF DELICT**

COURSE CODE : **L 306**

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

INSTRUCTIONS :

- 1. ANSWER ANY FOUR (4) QUESTIONS. MARKS ARE INDICATED AT THE END OF EACH QUESTION.**
- 2. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY.**

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QUESTION 1

Senanile had been suffering from fits for years. When they got worse, her husband took her to the home of a famous traditional healer *sandlasemfene* for treatment. Part of the treatment consisted of the inhalation of fumes of medicine which was sprinkled over live coals, which caused Senanile severe bouts of coughing.

Further, the patient was covered with blankets over a pot of mixed herbs into which pot red hot burning stones were put in from time to time by *sandlasemfene* and his assistants. After the second lot of stones were put into the pot, Senanile tried to get out of the covers of blankets, but was forcible pushed down by *sandlasemfene* with the help of his assistants because according to him it was not Senanile wanting to come out of the blankets but the evil spirits in her which caused the fits which did not want the treatment. During the treatment Senanile was severely burnt.

She has come to you for advice. Advise accordingly.

[25 MARKS]

QUESTION 2

While driving at 100 km/h along a freeway, Gama has a heart attack which causes him to lose consciousness. His car veers out of control and collides with a vehicle next to his moving in the same direction. Dlamini, a passenger in that vehicle, is injured and in the subsequent action, the third party insurer of Gama's vehicle, UNISWA Insurance Corporation, raises the defence that Dlamini's damage was not caused by any conduct of Gama, because Gama had been unconscious at the moment of collision.

Discuss the merits of this defence.

[25 MARKS]

QUESTION 3

X is working for a business specialising in the repair of electric appliances. In order to earn more, he repairs cars at night, using the garage under his flat as a workshop. As a very proficient panel beater, X in a short while achieves such success in his part-time own concern that his income from that source soon exceeds his salary from the firm. He has never taken the trouble to acquire a trade licence for his panel beating concern, because he was unaware of such requirement. Y, one of X's clients, injures X one evening by throwing X from a flight of stairs during a scuffle following a complaint by Y against X concerning the quality of work done by the latter. X fractures his right arm so badly that he virtually loses the use thereof.

Will X be able to claim his loss following his inability to further pursue his panel beating activities from Y? Discuss fully and with relevant authorities.

[25 MARKS]

QUESTION 4

Dube, a diabetic, was suddenly struck by a distressing and debilitating stomachache which was accompanied by vomiting and diarrhoea. His wife immediately rushed him to the RFM hospital's casualty department. The nurses told the Dube's to wait for the doctor responsible for the casualty department, and did nothing for Dube, even though he was obviously in great pain, and further, the wife told them that he being a diabetic she is worried because his body has expelled all the little sustenance he had taken at home. The doctor eventually showed up after three and half hours by which time Dube had gone into a diabetic coma, he died the next day.

What are Mrs. Dube's chances of success should she sue the RFM hospital? [25 MARKS]

QUESTION 5

Mazibuko was involved in a motor accident which was caused solely by the negligence of Mamba the driver of the other vehicle insured by Mdzimba Insurance Co. Ltd. Mazibuko's injuries caused him to be absent from work for six months. He would have lost his wages during this period were it not for the fact that he had been entitled, in terms of his contract of employment, to sick leave on full pay. His injuries were so severe that they left him virtually unfit for work. However, his employer out of compassion and generosity re-instated him and paid him the same wages as before.

Whilst not denying liability for the accident Mdzimba Insurance Company want the payments made to Mazibuko by virtue of his contract of employment while he was on sick leave and the wages paid to him on account of his employer's compassion after the accident to be taken into account in the assessment of damages.

Discuss the legal position illustrating your answer with cases. [25 MARKS]