

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2009

- 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.**

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

Delict Main exam 2009

Instructions

- a) Answer any four questions
- b) Your answer must be cogent, reasoned and well organised
- c) Read and understand what the question requires of you
- d) All questions carry equal marks

QUESTION 1

Mabandzampo Dlamini is a self employed "refrigerator repairer" and earns A monthly salary of E2,000.00 when business is good. On 10th November 2006 he was arrested by members of The Royal Swaziland Police on a charge of murder. He failed to raise the bail amount of E15,000.00 demanded by the prosecutor. He has been in custody for over two years. He now suffers from phemonia which he contracted whilst in custody.

At Dlamini's trial at the High Court, the complainant, when asked to identify him, could not do so and the Court released him on the basis that the description given by the complainant does not correspond with that of Mabandzampo.

- (a) Has Mabandzampo suffered any damages?
- (b) Regardless of your answer to the above question, would the Apportionment of Damages Act No.4 of 1970 apply?
- (c) What would your comment be with regard to the once and for all rule and mitigation of damages principles.

(25)

QUESTION 2

An award for damages for defamation serves two broad purposes; vindication of the plaintiff's reputation and providing him or her with a *solatium* for wounded feelings.

What are the elements the plaintiff should prove to succeed in his /her action.

(25)

QUESTION 3

Write short notes on the following

- (a) Animus injuriandi
- (b) Economic loss
- (c) Disciplinary chastisement
- (d) Contributory negligence
- (e) Factual causation

(25)

QUESTION 4

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)

QUESTION 5

Discuss the essential elements of a delict under the two pillars (*actio legis aquillia* and *actio injuriarum*) 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 6

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 7

(a) 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.

(15)

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

(10)